

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,241

311

CHARLES CLEMONS, APPELLANT

v

UNITED STATES OF AMERICA, APPELLEE

BRIEF FOR APPELLANT

APPEAL FROM VERDICT AND JUDGMENT IN
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Of Counsel:

Dow, Lohnes & Albertson
600 Munsey Building
Washington 4, D. C.

November 13, 1962.

John B. Jacob
Charles J. McKerns
Attorneys for Appellant
(By Appointment of this Court)

United States Court of Appeals
for the District of Columbia Circuit

NOV 13 1962

John B. Jacob

CLERK

STATEMENT OF QUESTIONS

The questions presented are:

1. Whether the lower court erred in not granting the appellant's motion for acquittal in a rape prosecution, based purely on corroborative circumstantial evidence, primarily, a baseball ticket stub allegedly found at or around the scene of the alleged incident and where there was no positive identification of the Appellant by the prosecutrix or other witnesses establishing the Appellant's connection with the act; and
2. Whether, under the circumstances, the trial court erred in law and in fact, in instructing the jury that the Appellant had not contested the fact that a rape had been committed; and
3. Whether it was reversible error for the prosecuting attorney, in his closing argument, to comment to the jury on the Appellant's failure to take the stand in his own behalf.

TABLE OF CONTENTS

	<u>Page</u>
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	
Procedural Background	1
The Facts	3
STATUTES INVOLVED	12
STATEMENT OF POINTS	14
SUMMARY OF ARGUMENT	14
ARGUMENT	
I. THE LOWER COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION FOR ACQUITTAL IN A RAPE PROSECUTION, BASED PURELY ON CORROBORATIVE CIRCUMSTANTIAL EVIDENCE, PRIMARILY, A BASE-BALL TICKET STUB ALLEGEDLY FOUND AT OR AROUND THE SCENE OF THE ALLEGED INCIDENT AND WHERE THERE WAS NO POSITIVE IDENTIFICATION OF THE APPELLANT BY THE PROSECUTRIX OR OTHER WITNESSES ESTABLISHING THE APPELLANT'S CONNECTION WITH THE ACT	17
II. THE PROSECUTOR'S REMARK TO THE JURY CONSTITUTED AN IMPROPER COMMENT ON DEFENDANT'S FAILURE TO TAKE THE STAND	26
III. THE COURT'S CHARGE TO THE JURY CONTAINED AN IMPROPER FACTUALLY INCORRECT AND PREJUDICIAL COMMENT UPON THE EVIDENCE	33
CONCLUSION	37
ACKNOWLEDGMENT OF SERVICE	39

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Brinegar v. U.S.</u> 338 U.S. 169, 839	14
<u>McKenzie v. U. S.</u> 126, F.2d 533, 75 U.S. App. D.C. 270 (1942)	14
<u>United States v. Ginn</u> , D.C. Pa. 1954, 124 F. Supp. 658, 222 F.2d 289	15
<u>Tri-Angle Club, Inc. v. U.S.</u> CA Iowa 1959, 265 F.2d 829	15
<u>McGinnis v. U.S.</u> 256 F.621	15
<u>U.S. v. Brown</u> CC4 McLean 142, F Case No. 14667	15, 24
<u>Kidwell v. U.S.</u> 38 App. D.C. 566 (1912); conviction reversed	15, 19, 26
<u>Ewing v. U.S.</u> 77 U.S. App. D.C. 14, 135, F.2d 633 (1942), Cert. denied 63 S.Ct. 829, 318 U.S. 776, 87 L.Ed. 1145, rehearing denied 63 S.Ct. 991, 318 U.S. 803, 87 L.Ed. 1167	15, 19, 20
<u>McGuinn v. U.S.</u> 89 U.S. App. D.C. 197, 191 F.2d 477 (1951)	15, 19, 20, 24, 26
<u>Miller v. U.S.</u> 93 U.S. App. D.C. 76, 207, F.2d 33 (1953)	15, 19, 20
<u>Walker v. U.S.</u> 96 U.S. App. D.C. 148, 223, F.2d 613 (1955)	15, 16, 19, 21
<u>Roberts v. U.S.</u> 109 U.S. App. D.C. 75, 284, F.2d 209 (1960)	15, 19, 21, 26
<u>Battle v. U.S.</u> 92 U.S. App. D.C. 220, 221 (1953); 206 F.2d 440, 441	16
<u>Campbell v. U.S.</u> 85 App. D.C. 133, 176, F.2d 45 (1949)	18
<u>Saunders v. U.S.</u> 260 F.386	24

	<u>Page</u>
<u>State v. Guilfoyle</u> (109 Conn. 124, 145 A 761) . . .	24
<u>Colbaugh v. U.S.</u> (15 F.2d 929)	24
<u>Stewart v. U.S.</u> 366 U.S. 1 (1961)	27, 28, 33
<u>Grunewalt v. U.S.</u> 353 U.S. 391 (1957)	27, 32
<u>Wilson v. U.S.</u> 149 U.S. 60 (1893)	27, 32
<u>U.S. v. Sprengle</u> , 3rd Cir., 103 F.2d 876 (1939) . .	27
<u>State v. Hector</u> , 158 Iowa, 664, 138 NW 930 (1912) ..	30
<u>Washington v. State</u> , (Tex. Crim.App., 1903) 77 SW 810	30
<u>Baker v. State</u> , 122 Ala. 1, 26 So. 194 (1898) . . .	31
<u>State v. Snyder</u> , 182 Mo. 462, 82 SW 12 (1904) . . .	31
<u>People v. Payne</u> , 131 Mich. 474, 91 NW 734 (1902) ..	31
<u>State v. Maxley</u> , 102 Mo. 374, 14 SW 969 (1890) . .	31
<u>Jemison v. State</u> , 79 Tex. Crim. Rep. 313, 184 SW 807 (1916)	31
<u>Quercia v. U.S.</u> 289 U.S. 466, 469 (1933)	34, 36, 37
<u>Billeci v. U.S.</u> 184, F.2d. 394, 87, U.S. App. D.C. 274 (1950)	34, 35
<u>U.S. v. Breitling</u> , 20 How. 252, 254-55	34
<u>Grounds v. Roth</u> , 210 F.2d 239 (10th Cir.)(1954) . .	34
<u>Brewster v. Boston Herald-Traveler Corp.</u> (D. Mass. 1960) 188 F. Supp. 565, 567	34
<u>Hale, History of the Common Law</u>	33
<u>5 Moore, Federal Practice</u> , 2507-08	34

BRIEF FOR APPELLANT

No. 17,241

CHARLES CLEMONS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

John B. Jacob
Charles J. McKerns
Attorneys for Appellant
(By Appointment of this Court)

Of Counsel:

Dow, Lohnes & Albertson
600 Munsey Building
Washington 4, D. C.

November 13, 1962.

JURISDICTIONAL STATEMENT

This is an appeal from a verdict of guilty and from judgment rendered on such verdict. Appellant was indicted for the crime of rape, Title 22, Section 2801 of the D. C. Code.

The Lower Tribunal had jurisdiction by virtue of Title 11, Sec. 322 of the D. C. Code, giving said Lower Tribunal jurisdiction to try all crimes and misdemeanors committed in the District of Columbia and the jurisdiction of this Court is claimed under the provisions of the Act of June 25, 1948, Ch. 646, 62 Stat. 929. ^{1/}

STATEMENT OF THE CASE

Procedural Background

On October 16, 1961, Charles Clemons, the Appellant herein, was indicted in this jurisdiction and charged with the crime of rape in violation of Title 22, Section 2801 of the D. C. Code, the offense allegedly taking place against the person of one Meta Waters on August 15, 1961. On October 13, 1961, the Appellant was arraigned before Chief Judge Maguire, of the District Court and pleaded not guilty. On October 20, 1961, an appearance was entered with the District Court by Wilbur W. Sewell, Esquire, whom Appellant had retained as trial counsel.

1/ This Court, by Order dated July 12, 1962, granted the Appellant's "Petition for Leave to Appeal in Forma Pauperis."

Trial was held before the Honorable Richmond B. Keech, United States District Judge for the District of Columbia on February 19, 20 and 21, 1962, and on the latter date, the Appellant was found guilty. Thereafter, on March 30, 1962, the Presiding Judge denied the Appellant's motion for a new trial, and on the same date Appellant was sentenced to from ten to thirty years' imprisonment.

On March 30, 1962, Appellant filed with the District Court a motion for leave to appeal in forma pauperis, and an affidavit in support thereof. On April 2, 1962, this motion was denied. Thereafter, on April 28, 1962, the Appellant filed with the Court of Appeals a petition for leave to prosecute an appeal without pre-payment of costs and an affidavit in support thereof. As aforesaid, on May 1, 1962, the Court appointed the undersigned as counsel to represent Appellant in this matter. On May 29, 1962, Appellant's counsel filed a motion for additional time within which to file the memorandum in support of the petition for leave to appeal in forma pauperis. On June 6, this motion was granted and the memorandum was filed on June 18, 1962. This Court, by order of July 12, 1962, granted Appellant's request for leave to appeal in forma pauperis and directed that the record be printed at government expense. Thereafter, by order of September 26, 1962, the Court further directed that

the record be printed at government expense and that Appellant's brief be filed on a date ten days after the printing of the Joint Appendix. On October 17, 1962, the Joint Appendix was printed and on October 23, 1962, Appellant filed a Motion for Extension of Time, to November 12, 1962, within which to file his brief which was granted by Order of October 31, 1962.

THE FACTS

It appears that on the evening of August 15, 1961, the Appellant attended a baseball game at Griffith Stadium in Washington, D. C., together with several other persons, including several of his co-workers at Glass Distributors, Inc. The tickets for the game were furnished to the men, including the Appellant, by Glass Distributors, Inc. and were in a "block", that is, all the tickets bore consecutive seat numbers. After the game was over, in the vicinity of 11:00 p.m. ^{2/} the Appellant and his friends left the ballpark. (See inter alia JA 45-49, 59-67).

Meta Waters, the complaining witness testified, in substance, that on the same evening, August 15, she had been to a play at the

2/ Various statements were made at the trial concerning the time that the baseball game ended. At least one witness said the game was over after 11:00 p.m. (JA 62). The government did not present the "best" evidence on this score. That is, no attempt was made by the government to ascertain the exact ending time of the game from any official source. (JA 11).

National Theatre and that after it was over, she went to her place of business at 1213 Eye Street, where she conducted an employment agency and had a small apartment. She testified that she left the National Theatre at about 11:30 p.m. (JA 30-31). After she arrived home, she changed to her nightclothes and prepared herself a sandwich. While returning to the kitchenette of her apartment she was attacked by an unknown assailant from behind. According to Meta Waters' testimony, the assailant took her into her apartment and threw her on the floor. She further testified: (JA 31-32).

"Then he asked me to get up and walk with him and he repeated that three times, walk with him and then he took me to the second office, to the front, and he threw me down on the floor."

She then testified that her assailant had sexual intercourse with her, forcibly and against her will. (JA 32). She stated that following the attack she went to an apartment house nearby and reported what had occurred. When she got back to her office, the police were there. (JA 33).

Later, Meta Waters underwent a physical examination at D. C. General Hospital and testimony given at the trial confirmed that she had recently had intercourse. (JA 52-58). Following the examination

3/ The record is silent as to any evidence from any official source as to what time the play ended.

at the hospital, she was released immediately as the doctors determined that hospitalization was not needed. (JA 55). Appellant's counsel questioned the physician who conducted the examination as to the possibility of the prosecutrix having had intercourse prior to the alleged assault and sought to question this witness as to whether or not it was unusual for a recently raped 80-year old woman not to require hospitalization.

On the night in question, Meta Waters was questioned by a police officer on the scene. At that time, she gave to the officers a detailed description of her assailant. She stated that he was ". . . a negro male, about thirty-five years, five-eight, medium build, light brown skin, wearing a light colored straw hat and a red print shirt . . ." (JA 9 and 88).

At the trial, Meta Waters stated that her assailant kept her face covered, either with a handkerchief or with his hands, during the alleged attack. She stated that while she saw his shirt and his hat, his hands and a six-inch blade knife, she did not at any time see his face. (JA 31-42).

In addition, the government at the trial produced testimony to the effect that fibers found on the Appellant's trousers could have come from the rug in Meta Waters' living room. Also testimony

was produced to the effect that fibers found on a gown and blouse belonging to Meta Waters could have come from the rug in the apartment. (JA 135-137). In this connection, it is important to note that Meta Waters testified that she did not wear the blouse on the night of August 15. She had not worn it for more than a week before that. (JA 143). Also, testimony was offered that there were seminal stains on a nightgown taken from Meta Waters' apartment and that there were seminal stains on Appellant's trousers. (JA 139-141).

According to the evidence of record, a baseball ticket was apparently recovered from the premises at some time during this evening. An Officer Bias testified that when he came upon the premises at about 12:00 midnight on the evening in question, he observed a ticket stub from Griffith Stadium lying on the rug in the room where the attack is alleged to have taken place. He testified that he did not take possession of the stub. (JA 86). An Officer Holden then arrived on the scene, according to the testimony, and took possession of the baseball stub which was still on the floor. He testified that he turned the ticket stub over to Officer Bonaccorsy. (JA 16-19 and 93). He was specifically asked: (JA 19).

"Q. Now, what did you do with that ticket that night?

"A. I kept it in my possession."

At the trial, an Officer Jones testified that he found a baseball stub on the steps of the premises in question on the evening of the alleged attack. He stated that he could not be certain that it was the same stub but that it was a like ticket. (JA 128-130).

Officer Holden was then recalled to the stand at which time he testified that he put the ticket he had found outside on the stairs. (JA 145). He testified that the ticket was put on the steps because the Canine Corps was on the premises and they wanted a dog to smell the ticket in an effort to get a scent. He then testified as follows: (JA 146-147).

"Then the dog smelled it and then they took off and they trailed it to the K Street Garage and one of the dogs started to chew it and I asked Jones if it was possible to get prints off it and he said no because it was wet and at that time he held it and later on it had been so chewed up he couldn't get prints off of it and he gave it back to me."

* * * * *

"A. I asked Jones to take it after I saw how mutilated the ticket was."

On this score, at the trial, Officer Jones testified: (JA 130-131).

"BY MR. SEWELL:

"Q. Officer Jones, you can positively identify this ticket from the others because you can feel the dog's tooth print still in this ticket?

"A. I thought so but I wasn't for sure, Mr. Sewell.

I thought I felt one place there but that was the reason I wouldn't say for sure. I think there is one indentation that feels like a tooth print. That is ticket 21."

Officer Holden testified that he got the ticket back from Jones at maybe four or five o'clock in the morning after he returned from the hospital. (JA 148).

Officer Bonaccorsy testified that when he came on duty the following morning the ticket stub was turned over to him and he ascertained that it was a part of the block of tickets purchased by Glass Distributors, Inc. Bonaccorsy contacted each of those said to have held the tickets and all except the Appellant were able eventually to produce ticket stubs. (JA 98-100).

The next day Meta Waters was taken to police headquarters and confronted with a "line-up." On three occasions she was taken to the "line-up" which included the Appellant and three other men. At no time did she identify the Appellant as the alleged assailant. (JA 7-8 and 38-39). On the third time before the "line-up" she stated that the Appellant looked more like the man than the others in the "line-up". (JA 7-8). This identification was made by an identification of his

clothes, primarily his shirt, as at no time did she identify the person at the "line-up." (JA 8). The only identification of a shirt was by its color. Identification was not based on the fact that, for example, it had been torn. (JA 52).

At the trial Meta Waters testified that there was a man in the "line-up" that had looked into her window when she was eating breakfast. (JA 38-39). The evidence also indicates that she possibly recognized someone else in the "line-up." Thus, out of four men in a "line-up" Meta Waters apparently identified two of the four prior to in any way identifying the Appellant. (See JA 116-117 and 155).

At the close of the government's case, Appellant's trial counsel moved for a judgment of acquittal and this was denied. (JA 163). The defense offered as witnesses, Appellant's mother and his wife. Appellant's mother, an employee of a dry-cleaning establishment, testified that the trousers referred to supra had been given to her some time ago by the dry-cleaning establishment. She further testified that at the time she remembered seeing the stain which the government's witness testified as being a seminal stain, on them. She further testified that repeated cleanings had failed to remove the stain and that her other son had worn the trousers before she gave them to Appellant. (JA 173-177).

The Appellant's wife, Mrs. Valorie Clemons, testified that on the night of August 15, 1961, her husband had returned to their home in Northeast Washington shortly after she had stopped watching television at approximately 11:30 p.m. She estimated that he arrived about ten or fifteen minutes thereafter. (JA 166-172). She further testified as follows: (JA 167).

"BY MR SEWELL:

"Q. Now, when he came in the house, Mrs. Clemons, could you tell us what he did? A. He came in the room and took off some of his clothes, his shirt and he went into the bathroom and right after he went in the bathroom, I came in there and he was brushing his teeth. That's all. Q. Did he appear excited or distraught in any way? A. No, he seemed normal."

In his closing argument the Assistant U. S. Attorney made the following remarks to the jury:

"Whom did they present? You will recall they presented Wills, Jr., and first before Wills, Jr., counsel asked Bonaccorsy, didn't Wills, Jr. come to you and say, are you sure you got the right man and Bonaccorsy said, no, he didn't and they put Wills, Jr. on and he said, no, I didn't tell Bonaccorsy that.

"You also heard the denial made to counsel by Washington when he asked the question. Who did they present, Members of the Jury? The wife and the wife said that he came home from the ball game and he went to the bathroom and he went to bed and that he went to bed in his shorts and she said after much reluctance that government's exhibit No. 2-B are like the

shorts that her husband wore and wears and after much reluctance she said the trousers are the trousers of the defendant.

"Now, Members of the Jury, they are trying to explain the stains on the trousers and the agent said the stains on the trousers are seminal stains and they bring the mother in and the mother says about two years ago, 1959, a customer gave her those trousers and counsel in his argument says that has not been rebutted. How can it be rebutted? Now, they could have presented, Members of the Jury -

"MR. SEWELL: I think this is improper. He said we could have presented --

"THE COURT: Ladies and Gentlemen, the defendant doesn't have to bring anybody in. You will determine whether the government has proven beyond a reasonable doubt the offense which the defendant is here charged with.

"MR CAPUTY: May I make the statement, where is the witness, Members of the Jury, who --

"THE COURT: The question is, Ladies and Gentlemen, the defendant is not required to bring anybody in. You are going to determine this case on the evidence which the government has shown you and whether or not that proves beyond a reasonable doubt that the defendant is guilty as charged." (JA 190).

Thereafter the Trial Judge delivered his charge to the jury and in the course of this charge, stated:

"The court merely says to you that statements of counsel, whether government counsel or defense counsel, do not constitute evidence in the case and furthermore, it is not government counsel's or defense counsel's or the court's recollection of the facts which control. You are the sole judges of the facts and you will determine the facts from your recollection thereof." (JA 192).

Subsequently, after he had discussed a number of other matters, including the presumption of innocence, reasonable doubt, expert testimony, circumstantial evidence and the definition of rape, the Court stated:

"Counsel for the defendant has not challenged the fact that Meta Waters was in fact raped on the occasion in question. He says to you that this defendant was not the person who did commit the offense." (JA 194).

Following the judge's charge, the jury retired to deliberate and as aforesaid, ultimately returned a verdict of guilty against the Appellant. Thereafter he was sentenced to serve ten to thirty years in prison.

STATUTES INVOLVED

The Constitution of the United States of America, Article V, provides:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Section 3481, Title 18, U. S. Code, provides:

"In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him."

Section 2801, Title 22, of the D. C. Code provides:

"Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: Provided, that in any case of rape the jury may add to their verdict, 'if it be guilty, the words 'with the death penalty,' in which case the punishment shall be death by electrocution.' Provided further, that if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section."

Rule 29(a) of the Federal Rules of Criminal Procedure, 18 U. S. C., provides:

"Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The Court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right."

STATEMENT OF POINTS

Appellant relies upon the following points and errors:

1. That there was insufficient evidence to establish Appellant's guilt beyond a reasonable doubt and that the trial court erred in denying Appellant's motion for a judgment of acquittal and in submitting the case to the jury.
2. That it was prejudicial error for the prosecuting attorney to comment to the jury in his closing argument on the Appellant's failure to take the stand in his own behalf.
3. That the trial judge erred in fact and in law in his charge to the jury that the defense did not contest the fact that a rape had been perpetrated on the complaining witness.

SUMMARY OF ARGUMENT

I.

It is a fundamental principal that in a prosecution for rape the elements of the crime plus the identity of the accused must be established by the government beyond a reasonable doubt. Brinegar v. U. S. 338 U. S. 169, 839; McKenzie v. U. S. 126 F 2d 533, 75 U.S. App. D.C. 270 (1942). Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a

verdict for the accused. United States v. Ginn, D.C. Pa. 1954, 124 F. Supp. 658, 222 F.2d. 289; Tri-Angle Club, Inc. v. United States, CA Iowa 1959, 265 F.2d. 829; McGinnis v. United States 256 F.621; United States v. Brown CC4 McLean 142, F. Case No. 14667.

While there have been other cases in the District of Columbia where corroboration of the prosecutrix has played a dominant role in the conviction of the Appellant,^{4/} in all but one of these cases there has been direct identification of the assailant by the prosecutrix and in the one exception, there was direct identification by two eyewitnesses who viewed the assault. In the instant case, however, there was no direct identification of the alleged assailant by any witness. In addition, circumstantial evidence pointing toward the identity issue was far more conclusive in the other cases. Therefore, it is evident that in the District of Columbia no conviction of rape has been sustained on evidence as sparse as that presently relied upon by the government and the

4/ Kidwell v. United States 38 App. D.C. 566 (1912); conviction reversed. Ewing v. United States 77 U.S. App. D.C. 14, 135 F.2d 633 (1942), Cert. denied 63 S.Ct. 829, 318 U.S. 776, 87 L.Ed. 1145, rehearing denied 63 S.Ct. 991, 318 U.S. 803, 87 L.Ed. 1167; McGuinn v. United States 89 U.S. App. D.C. 197, 191 F.2d 477 (1951); Miller v. United States 93 U.S. App. D.C. 76, 207 F.2d 33 (1953); Walker v. United States 96 U.S. App. D.C. 148, 223 F.2d 613 (1955); Roberts v. United States 109 U.S. App. D.C. 75, 284 F.2d 209 (1960).

trial court committed prejudicial error in denying Appellant's
5/
motion for acquittal.

II.

Any comment by prosecuting attorney or judge intended as, or understood as a reference to Appellant's failure to testify in his own behalf is a violation of Appellant's rights under the Fifth Amendment to the Constitution of the United States and Title 18, Section 3481 of the United States Code;

Certain remarks of the prosecuting attorney at Appellant's trial in his closing argument, to wit: "Who did they present? How can it be rebutted? Where is the witness?" constituted and were understood by the jury to constitute a reference to Appellant's failure to testify; and

Such a violation of Appellant's rights, in the circumstances, constituted prejudicial error and requires a reversal of Appellant's conviction.

III.

That a Federal Judge may comment to the jury on the evidence, provided his comments are not misleading or factually incorrect, and

5/ Review of this issue by this Court is not barred where accused procedurally failed to renew the motion. See Battle v. U.S. 92 U.S. App. D.C. 220, 221 (1953); 206 F.2d. 440, 441, cited in Judge Bazelon's Dissent in Walker v. U.S. 223 F.2d, 613.

so long as he cautions the jury, his opinions are not binding upon them;

That the comment of the Trial Judge that "Counsel for the defendant has not challenged the fact that Meta Waters was, in fact, raped" was both factually incorrect and given without adequate cautionary instructions; and

That this constituted prejudicial error.

ARGUMENT

I.

THE LOWER COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION FOR ACQUITTAL IN A RAPE PROSECUTION, BASED PURELY ON CORROBORATIVE CIRCUMSTANTIAL EVIDENCE, PRIMARILY, A BASEBALL TICKET STUB ALLEGEDLY FOUND AT OR AROUND THE SCENE OF THE ALLEGED INCIDENT AND WHERE THERE WAS NO POSITIVE IDENTIFICATION OF THE APPELLANT BY THE PROSECUTRIX OR OTHER WITNESSES ESTABLISHING THE APPELLANT'S CONNECTION WITH THE ACT.

It is submitted that the Trial Judge should have directed a verdict for the accused who was charged with a most serious crime. The authorities are clear that when a party is charged with rape, every safeguard should be thrown around him to insure a fair trial. British and American Courts have frequently quoted with approval in sex offense cases the ancient admonition of Sir Matthew Hale that:

". . . it is an accusation, easily made and hard to be proved, and harder to be defended by the party accused, though ever so innocent . . . It is necessary . . . to be the more cautious upon trials of offenses of the nature wherein the Court and jury may with so much ease be imposed upon without great care and vigilance; the heinousness of the offense many times transporting the judge and jury with so much indignation that they are over hastily carried to the conviction of the person accused thereof . . ."

This same admonition that the evidence offered in support of the charge of rape must be viewed and scrutinized with great care has been repeated by the United States Court of Appeals for the District of Columbia Circuit as recently as 1949. (See Campbell v. United States 85 App. D.C. 133, 176 F.2d 45 (1949)). It is to be remembered that in this case the defendant was a Negro and the prosecutrix was an 80-year old woman, a situation in which a jury of normal men and women would find the mere suggestion of rape or even intercourse, particularly repugnant and heinous. Certainly, therefore, Sir Matthew Hale's warning voice speaks with great application to this case.

No conviction of rape has been sustained on evidence as sparse as that relied upon by the government in the instant case. In many cases the right of the government to rely upon circumstantial evidence

6/

to corroborate the testimony of the prosecutrix has been affirmed. However, in each of these cases the evidence offered by the government by way of the prosecutrix and her corroborators, was far above, in quantity and dignity, the evidence in the instant case. To support this statement, there follows a review of the applicable cases in the District of Columbia wherein the Court has dealt with this issue.

Kidwell v. United States, 38 App. D.C. 566 (1912) is oft recognized as the landmark case relating the District of Columbia rule as to corroborative evidence in a rape case. In that case the prosecutrix testified positively both as to the rape and to the identify of her assailant as the accused. Nevertheless, the Court held that while a conviction of the offense of having carnal knowledge of a female under sixteen years of age may be sustained upon the testimony of the prosecutrix alone, such is the case only when the circumstances surrounding the parties at the time were such as to point to the probable guilt of the accused. The conviction for one offense was therefore reversed for the failure of the government to corroborate the testimony of the prosecutrix.

6/ Kidwell v. United States, supra; Ewing v. United States, supra; McGuinn v. United States, supra; Miller v. United States, supra; Walker v. United States, supra; Roberts v. United States, supra.

In Ewing v. United States 77 U.S. App. D.C. 14, 135 F.2d 633, (1942), as in the Kidwell case the prosecutrix testified directly and specifically as to the identity of the defendant and the elements of the crime. In addition, there was corroborating evidence which would bring this case under the Kidwell rule, such as evidence that the accused had been visiting with the prosecutrix and another witness shortly before the crucial time. In other words, besides the direct evidence of the prosecutrix, there was corroborating evidence that the accused himself, just prior to the rape, was conversing with the prosecutrix.

In McGuinn v. United States CA D.C. 191 F.2d 477, as in the Kidwell and Ewing cases, the prosecutrix positively identified the defendant as her assailant and gave direct evidence as to the elements of the crime. In addition, the accused was found in the front seat of the car "with his shorts and pants down." (Supra page 478). Moreover, the accused had signed a confession which he later retracted on the stand by testifying he was too drunk to recall what happened. All this was in corroboration of the testimony of the prosecutrix.

In Miller v. United States 297 F.2d 33, as in the Kidwell, Ewing and McGuinn cases, the prosecutrix positively and specifically identified the defendant. In addition, the prosecutrix was a girl under sixteen years of age and there was evidence of similar prior

and subsequent acts between the two parties and also evidence that the defendant was her father. In face of this direct testimony of the prosecutrix and significant corroborative evidence, the defendant was convicted of assault with intent to commit carnal knowledge of a girl under sixteen years of age, and not of rape.

In Walker v. United States 223 F.2d 613, as in the Kidwell, Ewing, McGuinn and Miller cases, the prosecutrix gave direct evidence as to the details and elements of the crime and directly and specifically identified the accused as the perpetrator. In addition, her testimony as to the elements of the crime was circumstantially corroborated by police witnesses who viewed the scene after the attack, and her testimony as to the identity of the assailant was corroborated by ^{7/} testimony of the defendant himself.

Roberts v. United States 284 F.2d 209. In this case as in the preceding cases, the prosecutrix testified directly as to the elements of the crime. Regarding the identity of the accused as the assailant, the victim testified she had not seen the assailant's face but she thoroughly described and identified his attire. In addition, two other witnesses testified that on the night of the attack, they

7/ The Court noted (page 618 supra), that while on the stand the defendant "refused to affirm or deny that on the night of the crime he had taken her out riding by Catholic University" or "down near a railroad line," or "seized her by the throat."

had seen a man whom they identified as the defendant, drag a woman down the alley where the attack took place. These witnesses specifically picked the defendant out of the "line-up" as the assailant in the alley. In addition, the day following the attack, the victim received a telephone call pursuant to which, and accompanied by her husband and police officers, she went to a certain location where the defendant, who was dressed as her assailant had been dressed, approached her and asked her if she were Clara (which was, in fact, her name). The Court said of this, "These circumstances are inexplicable as mere coincidence." (Page 210, supra).

In all but one of the above cases therefore, the prosecutrix specifically identified the accused as her assailant. In the one exception, the Roberts case, there was direct identification of the accused by eye witnesses at the time he was committing the assault.

In the instant case, not only was there no specific identification of the accused by the prosecutrix as her assailant, but there was no direct identification by any witness of the accused linking him with the act or even putting him in the same general area where

8/ It is to be remembered that the accused was subjected to a police "line-up" three times, in each of which case Meta Water failed to identify him.

the act occurred. There is no evidence offered by the government whatsoever that Charles Clemons and Meta Waters ever had the faintest idea that the other existed. There is not the slightest effort on the part of the government to show how the accused travelled across Washington, D. C. after the ball game ended at 11:00 p.m. (See footnote 2 this Brief), and committed burglary and rape in the incredibly short time in which the government's own witnesses place the time of the act. (JA 30-31). ^{9/} Indeed, all there is in this case to establish the identity of the defendant is circumstantial evidence, most, if not all, of which is corroborative in origin and none of which approaches the dignity of the evidence present in the other cases in the District of Columbia.

The weightiest evidence which would place the accused in the area of the act at any time was a baseball ticket stub which is linked to the defendant only by testimony that he sat in the corresponding seat and that it was one of a block of tickets scattered among several co-employees of Glass Distributors, Inc., the rest of which later could be located. Assuming for the moment, however, that the accused had obtained admission to the ballgame which would be at a time before 8:05 p.m. by virtue of that ticket,

9/ Although the record is unclear on the time the ballgame was over, the Washington Star August 16, 1961 edition, Section E, Page 5, and the August 16 edition of the Daily News lists the game as lasting 2 hours, 54 minutes, which starting as usual at 8:05 p.m. would end the game at 10:59 p.m.

there still is no evidence that he had the ticket or the stub in his possession from 8:05 p.m. on. In addition, it must be remembered that members of the Metropolitan Police Department were unable to agree as to who discovered the ticket and as to where it was discovered, either on or off the premises of the
prosecutrix.

10/

Moreover, all the corroborative evidence offered circumstantially to show the identity of the Appellant was susceptible to varying inferences, by no means all consistent with the guilt of the Appellant. While verdicts may be rendered upon rightful inference arising from the evidence as well as upon direct testimony, Saunders v. United States 260 F. 386, any conclusion reasonably to be drawn from the evidence which is consistent with the innocence of the accused must prevail. State v. Guilfoyle (109 Conn. 124, 145 A 761). See also Colbaugh v. United States (15 F.2d 929); United States v. Brown supra; McGuinn v. United States, supra. The same applies to the other circumstantial evidence of this case of somewhat lesser impact. For example, while the fact of filters being found in Appellant's trouser was offered to show his connection with the alleged act, it is not unreasonable, in light of the qualified opinion given

10/ From a reading of the record on this score, it is not unreasonable to conclude that two ticket stubs were found on the premises. (See Pages 6-7 of this Brief).

by the government's own expert witnesses, that the fibers found, while similar to that on Meta Waters' rug, had another origin not incriminating to the Appellant. In the same vein, the stains on Appellant's trousers could have been something else or could even have been acquired in a manner that did not support the government's own conclusion that Appellant was Meta Waters' assailant.

Regarding the shirt and the hat, these pieces of government evidence failed to shed light on the identity of the alleged assailant. (See Page 9 this Brief). ^{11/} As previously pointed out, Meta Waters did not make a meaningful identification of the articles offered into evidence.

Clearly, taking the evidence adduced either collectively or separately, it is not clear and not convincing as to the identification question and a reasonable man would have a reasonable doubt as to the culpability of this Appellant. One asks then, why the guilty verdict. At least a partial answer to this lies outside the evidence and in the statement of Sir Matthew Hale mentioned previously.

11/ It is important to note at this time that in each instance where the accused was placed in a police "line-up", and the prosecutrix failed to identify him, he was wearing the exact same clothes the government placed into evidence at trial as the assailant's clothes. The question is simple. If Meta Waters could identify them at trial, why could she not do so at police headquarters months before.

In short, Appellant respectfully submits that the evidence presented by the government in this case was conflicting, ambiguous and as a matter of law, insufficient to establish beyond a reasonable doubt, the identity of Appellant as the assailant and for that reason Appellant's motion for a judgment of acquittal should have been granted. (Kidwell v. United States, supra; McGuinn v. United States, supra; Roberts v. United States, supra.)

Never has a conviction of rape been sustained on the uncorroborated identification of the complaining witness. Here, we do not have any identification of the alleged assailant. Only after seeing a "line-up" three times, does she say that the Appellant looks more like the alleged assailant than the others. Since this identification was based on his shirt, it can only mean that Appellant's shirt looked more like the alleged assailant's shirt.

II.

THE PROSECUTOR'S REMARK TO THE JURY CONSTITUTED AN IMPROPER COMMENT ON DEFENDANT'S FAILURE TO TAKE THE STAND.

The law is clear in the Federal Courts that a defendant, in a criminal proceeding, may not be compelled to testify against himself, and that his failure to do so may not be the subject of comment by either prosecutor or judge. This right is premised upon the admonition

of Amendment V to the Constitution of the United States that "No person . . . shall be compelled in any criminal case to be a witness against himself." This right is made explicit in Title 18, Section 3481 of the United States Code, which adds the following element:

"This failure to testify . . . shall not create any presumption against him."

The United States Supreme Court has, in a number of cases, held that no argument can be made to a jury concerning defendant's failure to take the stand. Stewart v. United States 366 U.S. 1 (1961); Grunewalt v. United States, 353 U.S. 391 (1957); Wilson v. United States 149 U.S. 60 (1893); See Also United States v. Sprengle, 3rd Cir., 103 F.2d 876 (1939). In Wilson the Court held that it was prejudicial error for the prosecutor to argue to the jury that if he were on trial he would not be content to present character witnesses, but would go on the stand and testify to his innocence. In Grunewalt the defendant was charged with tax fraud and when called to testify before a Grand Jury invoked his Fifth Amendment privilege not to testify. Thereafter, at trial he did testify and gave exculpatory testimony. On cross-examination, the Government was permitted to draw from him the admission that he had declined to testify before the Grand Jury. In spite of the fact that the Trial Judge clearly instructed the jury that this admission

was to be considered only to show inconsistencies in defendant's actions and, thus, impeach his exculpatory testimony, the Supreme Court reversed his conviction, saying the admission of testimony concerning his failure to testify before the Grand Jury violated defendant's absolute privilege to remain silent and have no inference drawn therefrom.

This case and the case of Stewart v. United States, 366 U.S. 1, (1961), demonstrate the extreme concern the Supreme Court has exhibited, in recent years, to insure against the direct or indirect deterioration of defendant's privilege to remain silent. In Stewart the defendant, during his third trial for first degree murder took the stand, whereas, during his previous trials, he had not. Stewart's appearance on the stand was, in the words of the court, "obviously . . . for the purpose of giving the jury an opportunity directly to observe the functioning of petitioner's mental processes in the hope that such an exhibition would persuade them that his memory and mental comprehension were defective." (366 U.S. at 3). On cross-examination, in an attempt to provoke a lucid response, the prosecutor asked a series of questions about past events, including the questions, "Willie, you were tried on two other occasions?" and "This is the first time you have gone on the stand, isn't it, Willie?" (366 U.S. at 4). On the basis of these two questions, asked during the course of a long and voluminous record, the court held that a jury could have inferred that

defendant had not taken the stand during the previous trial and that as a result, defendant had been improperly deprived of his rights and his conviction must be reversed.

In the instant case, the Assistant United States Attorney (hereafter referred to as the Prosecuting Attorney) in his closing argument, ^{12/} having concluded his review of the evidence brought forth by the government, began his review of the Appellant's case by asking, "Who did they present?" After discussing the testimony of James A. Willis, Jr., and Maxwell Washington, he repeated this question, "Who did they present?" Then, after briefly discussing the testimony of Appellant's wife and mother, the Prosecuting Attorney asked, "How can it the testimony concerning the alleged seminal stains on Appellant's trousers be rebutted? Now they could have presented . . ." After being interrupted and cautioned by the court, ^{13/} he went on, "Where is the witness, Members of the Jury?" Appellant respectfully submits that the obvious impact of this line of argument in the minds of the jury, whether or not it was intended by the Prosecuting Attorney, was to remind them that Appellant had not taken the stand in his own behalf. That the prohibited reference,

12/ The exact text of this passage from the U.S. Attorney's closing argument appears at JA 189-90, and is set forth in Appellant's Statement of Facts.

13/ "THE COURT: Ladies and Gentlemen, the defendant doesn't have to bring anybody in. You will determine whether the government has proven beyond a reasonable doubt the offense which the defendant is here charged with."

to constitute prejudicial error, need not be overt, in so many words, is pointed out by State v. Hector, 158 Iowa, 664, 138 NW 930, (1912), where the Court said, "Such reference to defendant's failure to testify may be made indirectly with as much, if not more, force than if directly charged."

It must be noted that while propounding this series of questions, the Prosecuting Attorney mentioned every important witness who appeared for the defense. The obvious implication of his comments in this light is that the defense should have presented a further witness who could, in this context, be only the Appellant himself. The effect of the repetition of this theme in a series of connected remarks must also be borne in mind, not only on assessing the degree of prejudice to Appellant's rights involved, but in determining the reaction of the jury to the remarks. At least four times within a short space of time the Prosecutor reminded the jury that in his opinion the defense had failed to produce an important witness; indeed, once after he had been admonished by the court that the defense need not produce any witnesses. Appellant respectfully submits that in these circumstances, the probabilities are very high that whatever was intended, these remarks directed the jury's attention to the fact that Appellant had not taken the stand. (See Washington v. State, (Tex. Crim. App., 1903)) 77 SW 810, where the

remark "I have proved that he was there, and where is the proof that he was not? Who testified that he was not?" was held to be reversible error.

Indeed, Courts have recognized that while a prosecutor's remark arguing the alleged weakness of defendant's case is not improper, such a remark if directed specifically toward the failure of the defense to produce evidence or testimony on a given material fact is improper, if such fact is particularly within the knowledge of the defendant. (See Baker v. State 122 Ala. 1, 26 So. 194 (1898); State v. Snyder 182 Mo. 462, 82 SW 12 (1904). In People v. Payne 131 Mich. 474, 91 NW. 734, (1902), a case involving a seduction charge, the prosecutor in addressing the jury asked, "Where is the testimony that says she was not seduced?" The Court in reversing the defendant's convictions stated, "We think there is much force in the claim . . . that the only possible result of remarks of this kind was to direct the attention of the jury particularly to the fact that the defendant had not testified at all." In State v. Maxley, 102 Mo. 374, 14 SW 969, (1890) the statement, "They have offered not a word to explain or show how that woman came to her death" was held to constitute reversible error. (See also Jemison v. State, 79 Tex. Crim. Rep. 313, 184 SW 807, (1916).

It is perfectly clear that the remarks of the Prosecuting Attorney at issue here were, at the very least, unmistakably directed

toward the presentation of evidence particularly within the knowledge of the Appellant and thus, must be considered to have been understood by the jury to be a reference to Appellant's failure to testify. For example, when the Prosecutor was discussing Appellant's mother's testimony that the alleged seminal stains had been on the trousers for some time, he thereafter stated that the defense could have presented another, better witness to this fact, it is obvious the only person that he can be referring to is the Appellant himself.

Therefore, it is respectfully submitted that the remarks of the Prosecuting Attorney, above quoted, must be held to have constituted and been understood to be a comment upon Appellant's failure to take the stand. Nor is there anything in the record from which it may be deduced that this error was ever cured. Upon objection by Appellant's trial counsel, the trial court chose to understand these comments merely as an incorrect statement of Appellant's burden of proof. While the cautionary instructions delivered there and as a part of the Court's charge may be held to have cured this misstatement, no cautionary instruction was given to cure the basic error, i.e. the reference to Appellant's failure to testify. Indeed, Appellant submits that such an error is so fundamental and so devastating to Appellant's case that no instruction can cure it. In both Wilson v. United States, supra, and Grunewalt v. United States, supra, the trial judge attempted to instruct

the jury after reference had been made to defendant's failure to testify. In each instance, the conviction was reversed notwithstanding the cautionary instruction. The rationale for this may easily be seen. Any cautionary instruction sufficiently detailed to overcome the error in one sense, would doubtlessly create so much emphasis on the point in the jury's mind as to itself create an irremedial prejudice against the defendant. In Stewart v. United States, supra, the Supreme Court expressly recognized this fact when it stated (366 U.S. at 10) in response to the government's claim that defendant had waived this point by his failure to ask cautionary instructions, "One answer to this argument is to be found in the government's Brief The government expressly recognizes that the danger of the situation would have been increased by a cautionary instruction in that such an instruction would have again brought to the jury's attention defendant's prior failure to testify. Plainly the defense was under no obligation to take such a risk."

III.

THE COURT'S CHARGE TO THE JURY CONTAINED AN IMPROPER, FACTUALLY INCORRECT AND PREJUDICIAL COMMENT UPON THE EVIDENCE

At common law, a trial judge in charging the jury, possessed the power to explain and comment upon the evidence adduced. Hale, History of the Common Law, 291-92. Neither the enactment of the

Federal Constitution, nor of the Federal Rules of Civil and Criminal Procedure have altered this power. Quercia v. United States, 289 U.S. 466 469 (1933); 5 Moore Federal Practice, 2507-08. It is well settled that a Federal Judge in a criminal case is not an inert figure, a mere moderator. Billeci v. United States 184 F.2d 394, 87, U.S. App. D.C. 274 (1950). However, there are limitations on this power of a Federal Judge, which too, are important here. First, while he may "analyze and dissect the evidence of . . . he may not either distort it or add to it." Quercia v. United States. supra, at page 470. See also United States v. Breitling, 20 How. 252, 254-55; Grounds v. Roth, 210 F.2d 239 (10th Cir.)(1954). Further, he "must make it unequivocally clear to the jurors that conclusions upon such matters [in controversy] are theirs, not his to make," (Billeci v. United States, supra, at 403;) and "that all matters of fact are submitted to their determination." Quercia v. United States, supra, at 469. See also Brewster v. Boston Herald-Traveler Corp., (D. Mass. 1960) 188 F. Supp. 565, 567. Such an admonition must be given "in such a manner and at such times that the jury will not be left in doubt; references in some remote or obscure portion of a long charge will not suffice for the purpose." Billeci v. United States, supra, at 403.

In the instant case the Trial Judge clearly instructed the jury that Appellant's counsel did not contest the fact of the rape, only

Appellant's participation therein. This assertion is factually incorrect. One of the essential elements of the crime of rape, involving a female over 16 years of age, is that there be lack of consent, i.e. that it be against her will. 22 D.C. Code §2801. The record in this case reflects nothing to support the Trial Judge's assertion, and in fact an analysis of Defense Counsel's cross-examination of Robert Bleasdell, (JA 55-56) the intern who examined the prosecutrix shortly after the alleged assault, affirmatively demonstrates that Defense Counsel was not conceding the point that sexual intercourse had occurred without Meta Waters' consent and therefore, was not conceding the fact of rape. Thus, counsel questioned this witness concerning possible prior intercourse by prosecutrix (which would have explained the presence of sperm in her vagina) and concerning the fact that although 80 years old, prosecutrix did not require hospitalization following the alleged assault. The purpose for these questions becomes intelligible only if Appellant's counsel was testing the government's contention that the prosecutrix had had intercourse against her will. Thus, the defense cannot be held to have conceded the point. In Billeci v. United States, supra, the court held that merely because the defendant failed to present witnesses to contravert a point did

not mean it had conceded. A cross-examination and argument are sufficient to contest a point, since the defense is under no burden to affirmatively prove anything. (184 F.2d App. 401). Therefore, the portion of the Court's charge to the jury at issue here must be considered to be factually inaccurate and misleading.

Nor did the Court adequately inform the jurors that its comments were not binding upon the jury and that the jury remained ^{14/} the sole triers of fact. The only statement bearing at all on this point in the charge of the Court below was brief, general and ^{15/} completely disassociated from the statement at issue here. This instruction did not possess the requisite specificity to make "unequivocally clear" to the jury that they remained the sole triers of fact and it is defective for the further reason that it was contained in a "remote and obscure portion" of the charge, wholly unrelated to that portion of the charge requiring illumination.

Thus, it is respectfully submitted that the remark of the Trial Judge constituted prejudicial error in two ways: in that it was factually incorrect, and in that no adequate explanation was given to the jury that it might choose to disregard this remark. This error was prejudicial in that it must have left the jury in the

^{14/} It is interesting to note that in Quercia, where a factual incorrect comment was made by the Trial Judge, the fact that an adequate cautionary instruction was given did not cure the error (289 U.S. at 472)

^{15/} "THE COURT: It is not government counsel's or defense counsel's or the Court's recollection of the facts which control. You are the sole judges of the facts and you will determine the facts from your recollection thereof." (JA 192).

position where it believed itself foreclosed from questioning whether or not a rape did, in fact, occur. This Court cannot speculate that had the erroneous instruction not been given, the jury would, notwithstanding the aforesaid cross-examination, have found that a rape did, in fact, occur. The position of a Trial Judge is sufficiently important and his prestige sufficiently great that an error of this magnitude must be considered to be substantially prejudicial and to require reversal. The United States Court, in a similar situation has said:

"The privilege of comment in order to give appropriate assistance to the jury is too important to be left without safeguards against abuses. The influence of the Trial Judge upon the jury is necessarily and properly of great weight, and his lightest word or intimation is received with deference and may prove controlling." Quercia v. United States, 289 U.S. 466, 470, (1933).

CONCLUSION

WHEREFORE, it is respectfully submitted that for the reasons stated and in the particulars outlined above, the Trial Court erred, to the prejudice of Charles Clemons, Appellant herein.

Accordingly, it is respectfully requested that this Court:

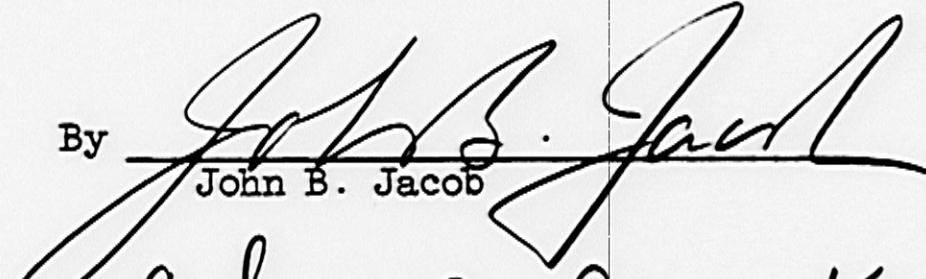
1. Reverse the conviction entered in the Court below and remand the case to the Trial Court with instructions to enter a

verdict of not guilty; and

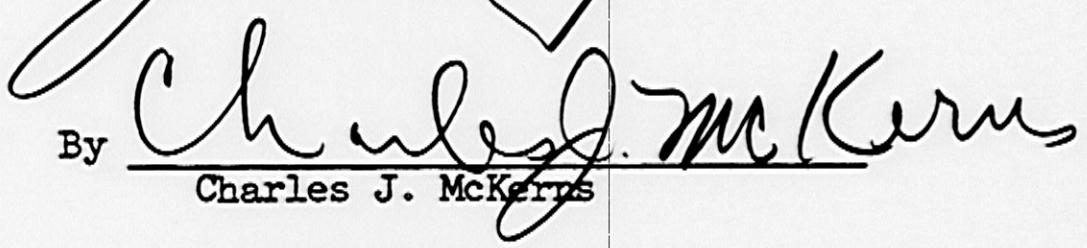
2. For such other and further relief as may appear to this Court to be necessary and just.

Respectfully submitted,

By


John B. Jacob

By


Charles J. McKerns

Attorneys for
Charles Clemons
Appellant
(By Appointment of This Court)

November 13, 1962.

ACKNOWLEDGMENT OF SERVICE

The undersigned hereby acknowledges receipt, this 13th
day of November, 1962, of a copy of the foregoing Brief for
Appellant.

By:

FOR: THE U. S. ATTORNEY
WASHINGTON 1, D. C.

227

REPLY BRIEF FOR APPELLANT

IN THE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 17,241

CHARLES CLEMONS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

REPLY BRIEF FOR APPELLANT

United States Court of Appeals
for the District of Columbia Circuit

RECEIVED
JAN 7 1963

Joseph W. Stewart

CLERK

Of Counsel:

Dow, Lohnes & Albertson
600 Munsey Building
Washington 4, D. C.

December 26, 1962.

John B. Jacob
Charles J. McKerns
Attorneys for Appellant

(By Appointment of this Court)

INDEX

Page No.

I	CONTRARY TO THE GOVERNMENT'S ARGUMENT THE EVIDENCE WAS INSUFFICIENT TO IDENTIFY THIS APPELLANT AS THE ALLEGED RAPIST, AND THIS COURT IS NOT PRECLUDED FROM REVIEWING THIS ISSUE BECAUSE OF A PROCEDURAL FAILURE AT TRIAL	1
II	CONTRARY TO THE GOVERNMENT'S ARGUMENT THE REMARKS OF THE PROSECUTING ATTORNEY DID IN FACT CONSTITUTE IMPROPER AND PREJUDICIAL COMMENTS AS TO APPELLANT'S FAILURE TO TESTIFY	7
III	APPELLANT WITHDRAWS THE ALLEGATION IN HIS BRIEF THAT THE TRIAL JUDGE DID NOT HAVE A PROPER FACTUAL PREDICATE TO MAKE CERTAIN COMMENTS TO THE JURY	14

TABLE OF AUTHORITIES

	<u>Page No.</u>
Carr v. U. S. 278 F 2d 702, Sixth Circuit (1960)	1
Johns v. U. S. 227 F 2d 374, 375, Tenth Circuit	1
U. S. v. Safur, 251 F 2d 30, Seventh Circuit	1
Ginsberg v. U. S. 275 F 2d 950, 955, Fifth Circuit	1
Kemp v. U. S., U. S. Ct. of Appeals for D. C. No. 17251, December 13, 1962	5
Barnes v. U. S. (8 Cir. 8 F 2d 833 (1935)	11
Linden v. U. S. (3rd Cir.) 296 Fed. 104 (1924)	11
Prince v. State 93 Miss. 263, 46 So. 537 (1908)	11
<u>Black's Law Dictionary</u> , Fourth Edition	5

CONTRARY TO THE GOVERNMENT'S ARGUMENT THE EVIDENCE WAS INSUFFICIENT TO IDENTIFY THIS APPELLANT AS THE ALLEGED RAPIST, AND THIS COURT IS NOT PRECLUDED FROM REVIEWING THIS ISSUE BECAUSE OF A PROCEDURAL FAILURE AT TRIAL

In its Brief, the government relies upon Battle v. United States, 206 F 2d 440 (1953) and urges that this Court should not review the sufficiency of the evidence in the instant case. Decisions, subsequent to Battle, have elaborately treated and affirmed the right of the Appellate Courts to review the sufficiency of evidence issue even though defendant procedurally failed at trial to make certain motions. For instance, in Carr v. United States, (278 F 2d 702, Sixth Circuit, 1960) the accused not only failed to move for a judgment of acquittal at the close of all the evidence but he had also failed to make the motion at the close of the government's case. Nevertheless, the Court held that this did not preclude review of the Sufficiency issue. On reversing the conviction, the Court noted: "the well settled exception is that plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court."^{1/}

1/ In support of this "well settled exception", the Court cited Johns v. United States, 227 F 2d 374, 375, Tenth Circuit; United States v. Safur, 251 F 2d, 30, Seventh Circuit; Ginsberg v. United States, 275 F 2d 950, 955, Fifth Circuit.

Even in the earlier case (Battle) the Court chose not to review the trial judge's denial of a motion for acquittal, only after determining that the trial judge had not erred in denying that motion. Furthermore, the Court went on to say, ". . . this principle would not restrain us from rectifying manifest error or serious injustice."

supra p. 441.

It is too clear for argument that if this Appellant is to be convicted upon insufficient proof, this would amount to a miscarriage of justice, even in the absence of a motion for acquittal. Therefore, should this Court adopt the harsh application of the Battle rule, as proposed by the government, the instant case is clearly within the "well settled exception" allowing review of the record.

In attempting to answer the Appellant's argument that rightful inferences to be drawn from the government's evidence at trial were consistent with the innocence of Appellant and thus must prevail, ^{2/} the government seems to concede the instability of its factual case by quoting a proposition from Professor McCormick's text on evidence. Thus, we have

2/ Saunders v. United States, 260 F.386; State v. Guilfoyle (109 Conn. 124, 145 A 761); Colbaugh v. United States, (15 F 2d 929); United States v. Brown, CC⁴ McLean 142, F Case No. 14667; McGuinn v. United States, 89 U. S. App. D. C. 197, 191, F 2d 477 (1951).

a suspect, a hypothetical Mr. A (Clemons), with separate characteristics similar to those of the sought-after criminal, as reported by an eye witness. By estimating the possibilities of any persons having all of these characteristics at once, it was determined that the odds against Mr. A not being the criminal were 300 to 1.

Without going into its propriety, this argument is only superficially impressive, as when its logic is pursued to a deeper and more meaningful level, the conclusion necessarily follows that one out of every 300 people, has the exact same characteristics as Mr. A. Thus, were the hypothetical Mr. A to live in the hypothetical Washington, D. C. area, (with over 1,000,000 population) more than 3,000 people in Mr. A's immediate locale would have the exact same characteristics as Mr. A ($\frac{1,000,000}{300} = 3,333$) and therefore the chances are over 3,000 to 1 against the hypothetical Mr. A being the guilty party.

Therefore, "without assigning numerical odds", what the government has said by this argument is that its evidence, proffered to establish the Appellant as the perpetrator of the alleged rape, overwhelmingly failed to establish the desired "mutual identity."

Contrary to the government's position, whether or not a conviction can be based on circumstantial evidence alone is not controlling here, when necessarily, that rule would require that the evidence be substantial. Such rule would be even more remote to our case in view of the fact that there has been no conviction in a rape case in the District of Columbia based solely on circumstantial evidence offered to identify the accused. Thus, the Hardeman v. United States, 82 U. S. App D. C. 194, 163 F 2d 21 (1947) holding which sustained a conviction of the non-infamous crime of

larceny, does not give merit to the conviction of this Appellant.

The government cites United States v. Smith for the proposition that circumstantial evidence and direct evidence are of equal value. An examination of the Smith case does not support that contention. What that Court did hold was that the inferences arising from the circumstantial evidence offered in that case, were sufficient for the jury to find, not identification, but that death was due to foul play rather than to accident. In ruling as such, the Court rigorously relied on the overwhelming facts supporting this inference.

"The body of the wife was found with wounds in her head and blood oozing from it. She never regained consciousness. The evidence showed that there was no one in the room at the time besides the deceased and the defendant. The police found two electric flatirons underneath the bed in that room. The tip of one of the flatirons had blood on it. The other had blood spattered on it. An iron pipe lay alongside which was likewise spattered with blood. There was blood all over the floor and blood splashed on the walls at a fairly high level. (7 feet)."
(Page 687 supra).

While the Court held that a conviction may be founded on circumstantial evidence, in doing so it stated: "Necessarily, circumstantial evidence must be strong." Obviously, the evidence was strong in that case.

The point argued by this Appellant is so well established that already this month (December 1962), this Court of Appeals has used it to

reverse a conviction (Kemp v. United States, U. S. Ct. of Appeals for D. C., No. 17251, December 13, 1962). In Kemp, the Court noted that the inference arising from the evidence offered ". . . was as consistent with innocence as with guilt."

It is Hornbrook law that the fundamental distinction between circumstantial evidence and direct evidence inures to the preference of the latter as the more reliable. Circumstantial evidence if true, proves another fact from which the fact in issue may be inferred. More often than not, as in our case, two or more mutually exclusive inferences might arise from a piece of circumstantial evidence. Such evidence in a criminal case, must fail as those rightful inferences consistent with the innocence of the accused must prevail. (See note 2, supra). Direct evidence, on the other hand, if true, directly proves the fact in issue and thus is more reliable.

In the instant case, one of the facts in issue is the identification of this Appellant as the alleged rapist. Direct and more reliable evidence on this point would be, for example, for someone to have picked the Appellant out of a line-up. In every other case in the District of Columbia, the government has met this burden, including the Roberts case.

As in Roberts, this direct identification may be based upon clothes or face so long as it is the identity of the accused being directly established and not merely the identity of the items of clothing. In the Roberts context, the clothes, build, etc., performed the same function for

3/ Black's Law Dictionary, Fourth Edition, "circumstantial evidence . . . consists in reasoning from facts which are known or proved to establish such as are conjectural to exist."

identification purposes as would recognition of the accused's face.

They were factors which aided the viewer to make positive, direct identification of the accused.

Unlike Roberts, at no time was this Appellant directly identified as the alleged assailant. Instead, direct identification was made on collateral items from which the government hoped to infer identity on the Appellant. Any subtlety as to the impact of the foregoing distinction quickly disappears when one considers that although Meta Waters identified the clothes (circumstantial evidence) at trial, ^{4/} she completely failed to make direct identification of the Appellant, although he faced her in a police line-up three times, wearing those same clothes to assist her. Moreover, at those times, Meta Waters not only could not identify the Appellant, she could not identify the clothing either.

There has never been a conviction of rape in the District of Columbia which did not rely, at least in part, on direct identification of the accused as the rapist. In the Roberts case, which is the only one which the government chooses to discuss, the accused was directly and specifically identified as the assailant by two eye witnesses. In addition, identification of Roberts was made by the prosecutrix, by his attire. In addition, Roberts himself had established a connection with the prosecutrix by telephoning her the next day and arranging a rendezvous.

4/ The government argues that Meta Waters was prevented from seeing her assailant's face as he held one hand over her face (and she alleges, a knife in the other hand) during the night's events. It seems incredible that Meta Waters could testify as to the age of her assailant (JA9) if she were unable at any time to see his face.

In view of all this, it is clear that the government has incorrectly stated the Roberts case by saying the conviction rested purely on circumstantial evidence. The fact is there was ample direct identification of Roberts by at least two eye witnesses, plus significant make-weight circumstantial evidence. None of that exists here.

II

CONTRARY TO THE GOVERNMENT'S ARGUMENT THE REMARKS OF THE PROSECUTING ATTORNEY DID IN FACT CONSTITUTE IMPROPER AND PREJUDICIAL COMMENTS AS TO APPELLANT'S FAILURE TO TESTIFY

The main thrust of Appellee's argument with respect to this point is that the remarks of the prosecuting attorney did not constitute and could not have been understood by the jury to be a reference to Appellant's failure to testify. In its Brief, the government chooses to understand the prosecuting attorney's remarks as being divided into a series of rhetorical questions and answers, each observation being unrelated to the others with the first two questions referring to witnesses who did testify and the last referring to an identifiable person, other than the Appellant.

It is respectfully submitted that there is no justification in the record, either in the syntax employed by the prosecutor or in a fair reading of his text, for dividing his argument in the manner the government suggests. Rather, to obtain the full effect of what the

5/ Appellee also contends that if the prosecutor's remarks are construed as a reference to Appellant's failure to testify, the instructions of the Trial Court cured such error. This contention will be dealt with in turn.

prosecutor said, and the likely impact his remarks had on the minds of the jurors, this entire passage must be read as a whole and considered in its ^{6/} broad context.

6/ "Whom did they present? You will recall they presented Wills, Jr., and first before Wills, Jr., counsel asked Bonaccorsy, didn't Wills, Jr. come to you and say, are you sure you got the right man and Bonaccorsy said, no, he didn't and they put Wills, Jr. on and he said, no, I didn't tell Bonaccorsy that.

"You also heard the denial made to counsel by Washington when he asked the question. Who did they present, Members of the Jury? The wife and the wife said that he came home from the ball game and he went to the bathroom and he went to bed and that he went to bed in his shorts and she said after much reluctance that government's exhibit No. 2-B are like the shorts that her husband wore and wears and after much reluctance she said the trousers are the trousers of the defendant.

"Now, Members of the Jury, they are trying to explain the stains on the trousers and the agent said the stains on the trousers are seminal stains and they bring the mother in and the mother says about two years ago, 1959, a customer gave her those trousers and counsel in his argument says that has not been rebutted. How can it be rebutted? Now, they could have presented, Members of the Jury -

"MR. SEWELL: I think this is improper. He said we could have presented --

"THE COURT: Ladies and Gentlemen, the defendant doesn't have to bring anybody in. You will determine whether the government has proven beyond a reasonable doubt the offense which the defendant is here charged with.

"MR CAPUTY: May I make the statement, where is the witness, Members of the Jury, who --".

As was pointed out in Appellant's Brief, the remarks in question here occur just after the prosecuting attorney has completed his summation of the government's case, and has begun to discuss the evidence offered by the defense. Four times, in the course of reviewing the testimony of the key defense witnesses, government Counsel asked the jury questions such as, "Whom did they present? . . . They could have presented . . . Where is the witness?" Thus, the first, obvious import of these questions, as part of the prosecuting attorney's critical analysis of Appellant's case, is that the defense could have presented another, more knowledgeable witness to establish Appellant's innocence. Who could this witness more logically have been than the Appellant himself? Even if reference to Appellant's failure to testify had been farthest from the intent of Government Counsel, yet it is respectfully submitted that it must be conceived that such an impression in the minds of the jury was, nevertheless quite likely as a result of his remarks. The very repetition of these questions, four times within a short period, must have added to and heightened this impression.

But while it is respectfully submitted that even without more, the fact of such repetition of general questions having as their obvious import the failure of the Appellant to testify justifies reversal of

Appellant's conviction, this court's judgment need not rest on this argument. For the prosecutor went further, and in one instance made a clear and unambiguous reference to Appellant's failure to testify.

One of the items of circumstantial evidence produced by the government was the testimony of an expert witness that stains on Appellant's trousers contained seminal material. Appellant's mother later testified that these stains had been on the trousers when they were given to her by a customer in the valet shop in which she worked as a seamstress, some time previously. This is the background in which the prosecutor said:

"Now Members of the Jury, they are trying to explain the stains on the trousers and the agent said the stains on the trousers are seminal stains and they bring the mother in and the mother says about two years ago, 1959, a customer gave her those trousers and counsel in his argument says that has not been rebutted. How can it be rebutted? Now, they could have presented, Members of the Jury -

"MR. SEWELL: I think this is improper. He said we could have presented --

"THE COURT: Ladies and Gentlemen, the defendant doesn't have to bring anybody in. You will determine whether the government has proven beyond a reasonable doubt the offense which the defendant is here charged with.

"MR. CAPUTY: May I make the statement, where is the witness, Members of the Jury, who -- "

The government concedes that this statement concerns a person who was not presented as a witness at the trial, but argues that it referred to the Appellant's failure to produce the customer who gave

Appellant's mother the trousers. Such a conclusion strains credulity. There was no testimony, on either direct or cross-examination, as to whether Appellant's mother ever knew the name of the customer. The government now tells the court that this customer was "particularly available" to the defense and therefore, the reference was obviously understood by the jury to be such person. In fact, the conclusion must have been irresistible to the jury that it was the Appellant, himself, who was being referred to, since he was just as much in possession of the facts from which to corroborate his mother's testimony, and was far more "particularly available" as a witness than the vague, undefined, unnamed customer.

Appellant has already urged on the court a number of cases holding that indirect allusions to Appellant's failure to testify or references to defense's failure to produce testimony as to things within the particular knowledge of the Appellant himself, constitutes an improper invasion of Appellant's right to remain silent. Also, in point to the latter proposition are Barnes v. United States, (8 Cir. 8 F 2d. 832) (1935); Linden v. United States, (3rd Cir.) 296 Fed. 104 (1924); Prince v. State, 93 Miss. 263, 46 So. 537 (1908). Aided by the rationale of these cases and bearing in mind that it is not necessarily the intent of the prosecutor in commenting, but the reasonably probable effect on the jury that is

crucial, it is respectfully submitted that the court must conclude that the most likely effect of the remark at issue here was to impress on the jury's mind that Appellant had not taken the stand.

The case of Peden v. United States, 96 U. S. App. D. C. 27, 223 F 2d 319 (1955), relied on by the government is not in point. In Peden the prosecuting attorney, in his closing argument remarked that the testimony of a police officer, one of three witnesses to Appellant's arrest, to the effect that Appellant had first admitted and then denied guilt, was uncontradicted. This court held such a remark not to be a reference to Appellant's failure to testify and affirmed the conviction. But Peden is distinguishable from the instant case in the following ways: First, it was obvious that there had been two other police officers witnesses to Defendant's arrest; Defendant could have called either of them to contradict the witnesses' testimony; therefore, the facts in Peden, unlike the facts in the instant case, refute the assertion that the prosecutor was commenting on Appellant's failure to produce testimony within his, the Appellant's own peculiar knowledge.

Also the court in Peden was careful to point out that the testimony which the prosecutor called "uncontradicted" was not simply a recounting of Defendant's alleged confession, but of both his confession and his subsequent exculpatory statement. Therefore, the court

correctly reasons "Peden's Fifth Amendment rights were not invaded."

The government's claim that were this remark held to constitute a reference to Appellant's failure to testify "the firmness of the trial court's immediate admonishment and correcting instructions" cleared the air is palpably incorrect. The Supreme Court on at least two occasions (Wilson v. United States, 149 U. S. 60 (1893) and Grunewalt v. United States, 353 U. S. 391 (1957)) has reversed convictions because of the improper references to Appellant's failure to testify, in each case in spite of cautionary instructions by the trial court. In Stewart v. United States, 366 U. S. 1 (1961) the court went further, and in disposing of the government's argument that Appellant waived objections to such a reference because of failure to ask cautionary instructions, said:

"One answer to this argument is to be found in the Government's Brief . . . The Government expressly recognizes that the danger of the situation would have been increased by a cautionary instruction in that such an instruction would have again brought to the jury's attention Defendant's prior failure to testify. Plainly the defense was under no obligation to take such a risk." (366 U. S. 1, 10).

The obvious import of these cases is that just as the right to remain silent is a basic and vital Constitutional protection, so invasions of this right are devastatingly prejudicial in the minds of the jury. Once the reference has been implanted with the jury, any instructions

sufficiently detailed effectively to combat it, perforce must themselves reinforce the impression, to the further prejudice of the Appellant.

The Supreme Court has wisely and correctly said:

"The minds of the jurors can only remain unaffected from this circumstance by excluding all reference to it." (Wilson v. United States, supra, at 65).

But in fact, no extended legal discussion is needed to deal with this point and refute the government's contention. Upon objection by Appellant's trial counsel, the trial judge chose to understand the prosecutor's remarks only as an incorrect assertion as to Appellant's alleged burden of proof. While the admonition the trial judge gave on this point may have been adequate, were burden of proof the real point at issue, it missed the basic error involved, and did nothing to dispel the prejudice thus created. No general instruction thereafter given as a part of the judge's charge, could rectify the error that had been committed.

III

APPELLANT WITHDRAWS THE ALLEGATION IN HIS BRIEF THAT THE TRIAL JUDGE DID NOT HAVE A PROPER FACTUAL PREDICATE TO MAKE CERTAIN COMMENTS TO THE JURY

The court, in granting Appellant's Motion for Leave to Prosecute an Appeal in Forma Pauperis directed that the transcript of Appellant's trial in the court below be printed at government expense,

with certain specified exceptions. Included was the text of the judge's charge; excluded was the closing argument of Appellant's trial counsel.

Upon review of those portions of the transcript ordered to be printed by the court, Appellant's undersigned court appointed counsel noted that the trial judge had instructed the jury that Appellant's trial counsel did not contest the fact of a rape, but only the identity of the rapist. Nothing in the record available to Appellant's undersigned counsel supported such a statement.

Therefore, Appellant's undersigned counsel assigned the trial judge's statement as error in that upon the record available to them they believed it to represent improper comment upon the evidence by the trial judge. Thereafter, the government, with the consent of Appellant's undersigned counsel, moved to introduce as a supplement to the record Appellant's trial counsel's closing argument. The Appellant's undersigned counsel have determined that this closing argument contains the proper factual predicate for the trial judge's aforesaid comments. Therefore, Appellant withdraws his allegation of error on this point.

Respectfully submitted,

By

John B. Jacob

Charles J. McKerns

Attorneys for the Appellant

Counsel:

Dow, Lohnes & Albertson
Munsey Building
Washington 4, D. C.

December 26, 1962.

ACKNOWLEDGMENT OF SERVICE

The undersigned hereby acknowledges receipt this 26th day
of December, 1962, of a copy of the foregoing.

By: _____

FOR: THE U. S. ATTORNEY
WASHINGTON 1, D. C.

PETITION FOR APPELLANT

IN THE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 17,241

CHARLES CLEMONS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

PETITION FOR REHEARING AND RECONSIDERATION
EN BANC

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 15 1963

Nathan J. Paulson
CLERK

Of Counsel:

Dow, Lohnes & Albertson
600 Munsey Building
Washington 4, D. C.

February 15, 1963.

John B. Jacob
Charles J. McKerns
Attorney for Appellant

(By Appointment of this Court)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

CHARLES CLEMONS,)
Appellant)
v.) No. 17,241
UNITED STATES OF AMERICA,)
Appellee)

PETITION FOR REHEARING AND RECONSIDERATION, EN BANC

Charles Clemons, Appellant, by his attorneys, and pursuant to Rule 26 of this Court, hereby respectfully submits this Petition for Rehearing and Reconsideration En Banc. In support hereof the following is shown.

PRELIMINARY STATEMENT

1. On February 21, 1962, the Appellant was found guilty of the crime of rape, Title 22, Section 2801 of the D. C. Code and thereafter was sentenced to from 10 to 30 years imprisonment. On May 1, 1962, the Court appointed the undersigned as counsel to represent Appellant. Following the filing of briefs and oral argument, this Court on January 31, 1963, rendered its opinion affirming Appellant's conviction.

SUMMARY OF POSITION

2. It is respectfully submitted that an examination of the Court's opinion affirming this conviction makes clear that the Court did not fully appreciate, and thus did not give proper consideration to the points urged by Appellant, and thus rehearing is requested. There is no question but that the evidence presented in this case was circumstantial in nature. ^{1/} There was no direct evidence at all.

3. Appellant, in his brief, contended (1) that there was insufficient evidence to establish Appellant's guilt beyond a reasonable doubt and (2) that it was prejudicial error for the prosecuting attorney to comment to the jury in his closing argument on the Appellant's failure to take the stand in his own behalf. In his closing argument the prosecuting attorney made the following remarks to the jury:

"Whom did they present? You will recall they presented Wills, Jr., and first before Wills, Jr., counsel asked Bonaccorsy, didn't Wills, Jr. come to you and say, are you sure you got the right man and Bonaccorsy said, no, he didn't and they put Wills, Jr. on and he said, no, I didn't tell Bonaccorsy that.

"You also heard the denial made to counsel by Washington when he asked the question. Who did they present, Members of the Jury? The wife and

1/ In this regard it is noted that the Court mentions as an example of the "strong circumstantial evidence" presented, the finding of a baseball ticket stub. Without going into further argument concerning the circumstances surrounding the baseball ticket, it is respectfully suggested that the Court is in error in suggesting this to be an example when, in fact, it was the only evidence presented of any substance.

the wife said that he came home from the ball game and he went to the bathroom and he went to bed in his shorts and she said after much reluctance that government's exhibit No. 2-B are like the shorts that her husband wore and wears and after much reluctance she said the trousers are the trousers of the defendant.

"Now, Members of the Jury, they are trying to explain the stains on the trousers and the agent said the stains on the trousers are seminal stains and they bring the mother in and the mother says about two years ago, 1959, a customer gave her those trousers and counsel in his argument says that has not been rebutted. How can it be rebutted? Now, they could have presented, Members of the Jury -

"MR. SEWELL: I think this is improper. He said we could have presented --

"THE COURT: Ladies and Gentlemen, the defendant doesn't have to bring anybody in. You will determine whether the government has proven beyond a reasonable doubt the offense which the defendant is here charged with.

"MR. CAPUTY: May I make the statement, where is the witness, Members of the Jury, who --

"THE COURT: The question is, Ladies and Gentlemen, the defendant is not required to bring anybody in. You are going to determine this case on the evidence which the government has shown you and whether or not that proves beyond a reasonable doubt that the defendant is guilty as charged." (JA 190).

4. In light of the sparse nature of the evidence presented, the remarks made to the jury by the prosecuting attorney in his closing argument must be deemed to be prejudicial error. This Court concluded that the challenged remarks did not refer to Appellant's failure to testify. Even if the Court's conclusion is correct, however, we submit

that the real question remains unanswered. The real question is not what the prosecuting attorney intended to achieve by these remarks,
but what did they mean to the jury.

ARGUMENT

5. Appellant believes that this question merits re-examination and reconsideration by the Court en banc, not only because it presents a serious Constitutional issue, one going to the essence of Appellant's right to refrain from testifying, but in addition because it involves an area of the law where there are no clear authorities among the Federal cases.

6. The law is clear that where a remark made during trial, in fact, constitutes reference to defendant's failure to testify, this remark, if uncured, constitutes prejudicial error, e.g. Stewart v. United States, 366, U. S. 1 (1961); Wilson v. United States, 149 U.S. 60 (1893). But the critical question involved here, and the point upon which this court, in affirming the trial court, decided adversely to Appellant, is the question, did the remarks made actually refer, or were they understood by the jury to refer to defendant's failure to testify. It is upon this latter point, i.e. whether the contested remarks could reasonably be understood to refer to Appellant's failure to testify, that a clear rule of law is lacking in the Federal courts, and Appellant submits, the decision of the court herein is contrary to the better reasoned state cases.

7. To assess and evaluate the effect of the challenged remarks as this court must do, it is necessary to bear in mind exactly what was

2/ It is certainly not Appellant's burden to demonstrate "the subjective state of mind, the intent of the prosecutor." Rather it is respectfully submitted, the true test must be the objective one of what is the reasonably likely impact of these remarks on the jurors.

said and the context in which the remarks were delivered.

8. Thus, essentially what took place was that the Assistant United States Attorney, toward the conclusion of his closing argument, reviewed the case offered by the defense. He touched upon every important witness presented in Appellant's behalf and urged the jury that these were insufficient to overcome the Government's case and that there was an additional, better witness the defendant could have offered. Appellant respectfully submits that the obvious impact of this line of argument, whether or not intended by the prosecuting attorney, was to remind the jury that Appellant had not taken the stand in his own behalf.

9. Further, this is not the instance of an isolated reference. Four times, within a short space of time, the Assistant United States Attorney reminded the jury that in his opinion the defense had failed to produce an important witness - indeed, this was done once after he had been admonished by the Court that the defendant need not produce any witnesses. The effect of this repetition could only have been to prejudice the defendant.

10. Appellant submits that this question is substantially identical to that resolved by the court in People v. Payne, 131 Mich. 474, 91 NW 734 (1902) where the prosecutor in addressing a jury asked, "Where is the testimony that says she was not [seduced]?" There the Court, in reversing Appellant's conviction, stated, "We think there is

much force in the claim . . . that the only possible result of remarks of this kind was to direct the attention of the jury particularly to the fact that the [defendant] had not testified at all." Certainly, it cannot be said to be any less probable that the remarks in the instant case directed the jury's attention to Appellant's failure to testify than did the remarks of the prosecutor held to be reversible error in Washington v. State (Tex. Crim. App. 1903) 77 SW 810, "I have proved that he was there and where is the proof that he was not? Who testified that he was not?" Or the statement in State v. Maxley, 102 Mo. 374, 14 SW 969 (1890), "They have offered not a word to explain or show how that woman came to her death", also held to constitute reversible error. The decision the court has rendered against Appellant herein is contrary to the rationale of all of these well reasoned state court decisions.

11. In the instant case, in at least one instance, where the Assistant United States Attorney questioned the value of the testimony of defendant's mother concerning the origin of possible seminal stains on Appellant's trousers, the more convincing testimony he demands could only come from Appellant himself. For this reason, it cannot be contended that the comments of the prosecutor referred only to the overall weakness of Appellant's case. It is well settled that where, as here, the prosecutor refers to the failure of the defense to present evidence particularly within the knowledge of defendant himself, such a remark must be held to constitute

an indirect but telling reference to defendant's failure to testify.

Baker v. State, 122 Ala. 1, 26 S. 194 (1898); State v. Snyder, 182 Mo. 462, 82 SW 12 (1904).

12. Thus, it is respectfully submitted that by very meaningful analysis the complained of remarks of the prosecuting attorney did, in fact, refer to, or just as important, were likely to have been understood by the jury, to refer to Appellant's failure to testify. This, in turn was a serious infringement on Appellant's right to remain silent under Amendment V to the Constitution of the United States and Section 3481 of Title 18 of the United States Code, and constituted prejudicial error requiring reversal of Appellant's conviction.

WHEREFORE, under the circumstances, and in view of the importance of the question presented, it is respectfully requested that the Court grant this Petition for Rehearing and Reconsideration, en banc, and such other and further relief as justice requires.

Respectfully submitted,

By

John B. Jacob

By

Charles J. McKerns
Attorneys for Appellant

Counsel:

Dow, Lohnes and Albertson
Munsey Building
Washington 4, D. C.

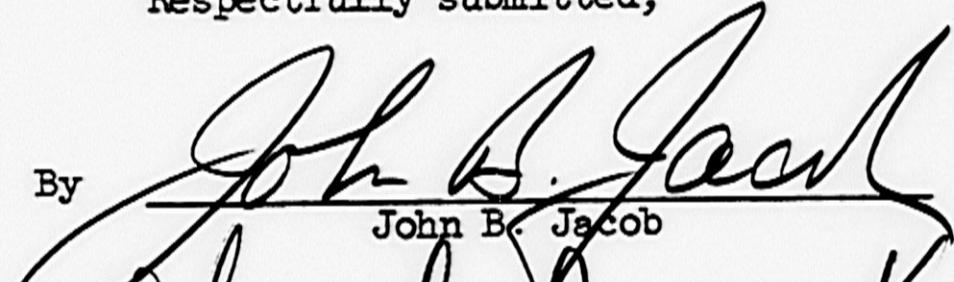
February 15, 1963.

CERTIFICATE

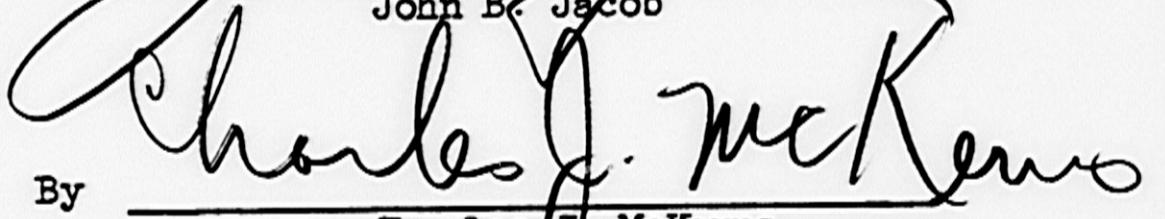
We, the undersigned court appointed counsel for Appellant herein, Charles Clemons, do hereby certify that the attached "Petition For Rehearing and Reconsideration" presents a substantial question of law and is filed in good faith. We further certify that it is not filed for the purpose of delay. In this regard, we respectfully advise the court that Appellant herein is presently incarcerated at Lorton, not admitted to bond.

Respectfully submitted,

By


John B. Jacob

By


Charles J. McKerns
Attorneys for Charles Clemons
Appointed by this Court

ACKNOWLEDGMENT OF SERVICE

The undersigned hereby acknowledges receipt this
day of February, 1963, of a copy of the foregoing.

By: _____

FOR: THE U. S. ATTORNEY
WASHINGTON 1, D. C.

BRIEF AND SUPPLEMENTAL APPENDIX
FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,241

CHARLES CLEMONS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEEBEKER,
VICTOR W. CAPUTY,
ROBERT A. LEVETOWN,
Assistant United States Attorneys.

~~United States Court of Appeals~~

for the District of Columbia Circuit

REC'D
DEC 18 1962

Joseph W. Stewart

CLERK

No. 17,241

QUESTIONS PRESENTED

In the opinion of the appellee, the following questions are presented:

- (1) Was the evidence establishing the appellant's identity sufficient in a prosecution for rape where the victim could describe the appellant by his clothes, build and complexion, where an expert testified that rug fibers which could have originated at the scene of the crime were found on appellant's clothing, where another expert testified that semen and blood stains were present on appellant's clothing, and where a baseball ticket stub marked section Q, row 4, seat 21, which appellant had used on the night of the crime, was inexplicably found inside the apartment where the crime had taken place?
- (2) Did the prosecutor's remarks in final argument constitute a comment on the appellant's failure to take the stand in the following instances:
 - (a) Where the prosecutor posed the standard rhetorical question, "Who did they present?" preparatory to a discussion of the testimony of two witnesses who actually were presented by the defense; or
 - (b) Where the prosecutor asked, "Where is the witness?", attempting to argue that two witnesses peculiarly available to the appellant, who could have corroborated some part of the defense, were missing?
- (3) Did the trial court's observation in the course of instructing the jury that the defense did not challenge the fact of the rape but rested on the issue of appellant's innocence of the crime constitute error where counsel for appellant had just finished arguing this proposition to the jury and where no objection was made to the judge's comment?

INDEX

	Page
Counterstatement.....	1
Statute and Rule Involved.....	4
Summary of Argument.....	5
 Argument:	
I. The Appellant Has Not Preserved His Right To At- tack The Sufficiency Of The Evidence On Appeal; In Any Event, The Evidence Was Sufficient To Support The Conviction.....	6
II. The Prosecutor Did Not Comment On The Defend- ant's Failure To Testify.....	10
III. There Was No Error In The Trial Court's Instruc- tions.....	13
Conclusion.....	14

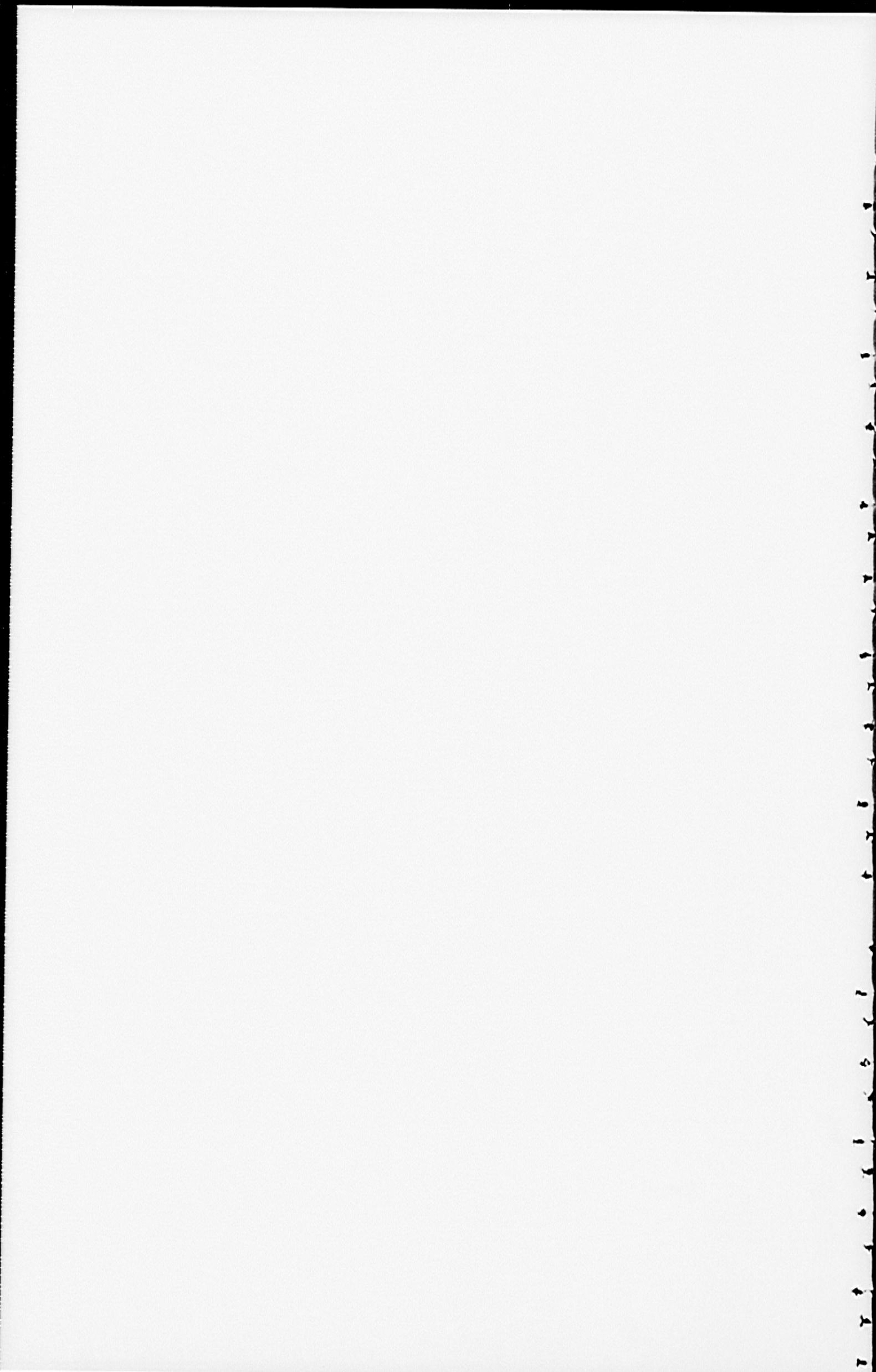
TABLE OF CASES

<i>Battle v. United States</i> , 92 U.S. App. D.C. 220, 206 F.2d 440 (1953).....	6
<i>Curley v. United States</i> , 81 U.S. App. D.C. 389, 160 F.2d 229 (1947).....	7
<i>Hardeman v. United States</i> , 82 U.S. App. D.C. 194, 163 F.2d 21 (1947).....	7
<i>Johnson v. United States</i> , 318 U.S. 189 (1943).....	14
<i>Lawson v. United States</i> , 101 U.S. App. D.C. 332, 248 F.2d 654 (1957).....	12
<i>Milton v. United States</i> , 71 U.S. App. D.C. 394, 110 F.2d 556 (1940).....	12
* <i>Peden v. United States</i> , 96 U.S. App. D.C. 27, 223 F.2d 319 (1955).....	12
* <i>Roberts v. United States</i> , 109 U.S. App. D.C. 75, 284 F.2d 209 (1960).....	6, 7
<i>United States v. Smith</i> , 179 F. Supp. 684, <i>aff'd in 109 U.S. App. D.C. 28, 283 F.2d 607 (1960)</i>	8
<i>White v. United States</i> , No. 17183, D.C. Cir., decided November 21, 1962.....	12

OTHER REFERENCES

McCORMICK, LAW ON EVIDENCE.....	8
I WIGMORE, EVIDENCE (3rd ed. 1940):	
§ 26.....	8
§ 149.....	7

* Cases chiefly relied upon are marked by asterisks.



United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,241

CHARLES CLEMONS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

**Appeal from the United States District Court
for the District of Columbia**

**BRIEF AND SUPPLEMENTAL APPENDIX
FOR APPELLEE**

COUNTERSTATEMENT OF THE CASE

By indictment filed in District Court on October 9, 1961, appellant was charged with the forcible rape of Meta Waters in violation of 22 D.C. Code 2801. (J.A. 29). A jury found appellant guilty. By judgment filed March 30, 1962, he was sentenced to ten to thirty years imprisonment. (J.A. 198-199). This appeal followed.

At trial, Meta Waters, an eighty year-old woman at the time of the crime, testified that she operated an employment agency at 1213 Eye Street, Northwest, in the District of Columbia. (J.A. 30). In the back of her office,

she maintained an apartment. (J.A. 31). Between 11:30 and 12:00 midnight on August 15, 1961, Mrs. Waters returned to these quarters after spending an evening at the National Theatre. (J.A. 30-31). She changed into a nightgown and went into the kitchen to get a glass of milk. While there, she was approached from behind by a knife-wielding assailant who covered her eyes with his hands. (J.A. 31-32, 35, 37). Mrs. Waters was forced to walk to the office area of her quarters where she was thrown to the floor, repeatedly threatened with death, and raped. (J.A. 31-32).

As the rapist had intercourse with Mrs. Waters, he covered her eyes with a handkerchief (J.A. 35); however, she was still able to determine that he was a light-completed Negro about her own height or a few inches taller, that he was wearing a red flower-print sports shirt and a small-brimmed straw hat. (J.A. 33-34, 38, 88). After the act was completed, the rapist struck Mrs. Waters in the face, threw her again to the floor and fled. (J.A. 33, 37).

Mrs. Waters, in her nightgown, hurried to the lobby of a nearby apartment building. At her request, the switchboard operator on duty summoned the police. (J.A. 42-44).

The police arrived and transported Mrs. Waters to the District of Columbia General Hospital where she was examined by Doctor Robert Bleasdell. (J.A. 33, 52). He testified that when Mrs. Waters was brought in she was disheveled and bruised; there was a large bruise on the left side of her face on the jaw, and bruises also on her left forearm and hand. (J.A. 53). A pelvic examination revealed that Mrs. Waters' vagina was bruised and bleeding, and that "there were small areas of punctate hemorrhages . . .". Slides were made of vaginal smears, and Dr. Daniel Weiss, a pathologist, testified that sperm were present in the cervical specimen. (J.A. 56-58).

When the police first arrived at the scene of the crime, they noticed a baseball ticket stub lying on the floor where the crime occurred. (J.A. 88-89, 93). Since Mrs. Waters

indicated that she had not recently gone to a ball game and that nobody else who had attended a ball game had been in this room (J.A. 89), the interest of the police in the ticket stub was aroused. Upon closer examination of the stub, it was found that the ticket was dated August 15, 1961 and was marked section Q, row four, seat 21. (J.A. 86-87, 93).

Mr. John L. Wilaj of the Washington Senators tickets and promotion department testified that this ticket was one of a block of six which were sold to Mr. Robert Bouchard of the Glass Manufacturing Company. (J.A. 49-50). The tickets were for seats 19 through 24 in row four, section Q. (J.A. 50).

Mr. Bouchard testified that he gave the six tickets in question to his foreman for distribution to his employees. (J.A. 45-47).

The foreman, James Richard Wills, testified that he personally received five tickets; the sixth ticket was given in his presence to Arthur Cox. (J.A. 59, 62). Wills distributed the five tickets as follows: he kept one himself; two he gave to Albert Dowe (nick-named Butts); and he gave the remaining two tickets to the appellant, Charles Clemons. (J.A. 60).

Albert Dowe testified that he kept one of his two tickets, and gave the second to his cousin, Maxwell Washington. (J.A. 78). Elmer Jackson, appellant's step-father, stated that he received the appellant's extra ticket. (J.A. 81).

The police eventually recovered all of the six ticket stubs as follows:

Seat 19—from Maxwell Washington
Seat 20—from Albert Dowe
Seat 21—found at the scene of the crime
Seat 22—from Arthur Cox
Seat 23—from John Wills
Seat 24—from Elmer Jackson
(J.A. 98-100).

As indicated above, only the appellant could not produce his ticket stub. Furthermore, four of the group who attended the game testified to facts which showed that ap-

pellant sat in seat 21. (J.A. 60, 71, 76, 124). Two of the group remembered that appellant wore a red print sports shirt and a straw hat. (J.A. 61-62, 69-70). Appellant's wife also admitted on the stand that her husband was wearing these articles of clothing on the night of the crime. (J.A. 166, 170-172).

The floor in Mrs. Waters' office where the crime occurred was covered with a green rug. (J.A. 35). An F.B.I. expert in the identification of fibers testified that green woolen fibers taken from this rug were similar in color and type to the fibers recovered from Mrs. Waters' nightgown and appellant's trousers. (J.A. 135-137). The expert concluded that the fibers removed from these articles of clothing could have originated from the rug.

An F.B.I. expert in the identification of human fluids testified that seminal stains and blood stains were found on Mrs. Waters' nightgown and on the inside of appellant's shorts. (J.A. 139-140). Seminal stains were also found on the front of appellant's trousers. (J.A. 140).

On the basis of the foregoing evidence, the jury returned a verdict of guilty.

STATUTE AND RULE INVOLVED

Title 22, District of Columbia Code, Section 2801, provides:

Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: *Provided*, That in any case of rape the jury may add to their verdict, if it be guilty, the words "with the death penalty," in which case the punishment shall be death by electrocution: *Provided further*, That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section.

Rule 30, Federal Rules of Criminal Procedure, provides:

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any

party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

SUMMARY OF ARGUMENT

I

Appellant did not renew his motion for a directed verdict at the close of all the evidence and therefore he cannot attack the sufficiency of the evidence as a matter of right on appeal. Moreover, the evidence was ample to support the conviction.

II

The prosecutor's remarks in closing argument cannot reasonably be regarded as a reference to the appellant's failure to testify at trial. The context in which the challenged remarks were made shows that in all instances the prosecutor had referred to witnesses other than the appellant, and in two of the three instances, he was merely discussing the testimony of defense witnesses who had actually testified.

III

The trial judge's observation that the defense did not contest the fact of the crime but claimed that the appellant was not the perpetrator supported the strategy of the defense. At trial, no objection was made to this comment nor could any have been made since counsel for appellant

had just finished arguing this proposition to the jury. The judge's observation, moreover, did not deprive appellant of any theory of innocence since the court instructed the jury on all the elements of the crime of rape, informed the jury that each element had to be found by them beyond a reasonable doubt if they were to find the appellant guilty, and the court further reminded the jury that they were the sole judges of the facts.

ARGUMENT

I

The Appellant Has Not Preserved His Right To Attack The Sufficiency Of The Evidence On Ap- peal; In Any Event, The Evidence Was Sufficient To Support The Conviction

The appellant is not entitled to a plenary review of the evidence. In the case at bar, as in *Battle v. United States*, 92 U.S. App. D.C. 220, 206 F.2d 440 (1953), "appellant did move for a directed verdict when the Government rested its case, but, following denial and the introduction of evidence in his behalf, failed to renew his motion at the close of all the evidence." 92 U.S. App. D.C. at 221 n. 2. Accordingly, any review of the evidence must now be confined to the correction of "manifest error or serious injustice." *Ibid.*; and see Rule 52(b), Fed.R.Crim.P.

Mrs. Waters was prevented by her attacker from viewing his face and, consequently, she could not identify him by facial characteristics. But she could and did identify him by his height, complexion and clothing.¹ Also, the

¹ Appellant seems to contend that identification by facial characteristics, or "direct identification" as he calls it, is necessary. That plainly is not the case. In affirming a conviction for rape in *Roberts v. United States*, 109 U.S. App. D.C. 75, 284 F.2d 209 (1960), this Court noted:

"The victim testified she had not seen her assailant's face, but she was able to describe his attire, especially a khaki-

stub of the ticket which appellant had used for a baseball game that night was inexplicably found at the scene of the crime, inside Mrs. Waters' apartment, lying on the very floor where the crime had taken place. Finally, green woolen fibers, which could have originated from the rug on that floor, as well as semen stains and blood stains were found on the victim's clothes and on the clothes that appellant had worn on the night of the crime.

Appellant argues that the foregoing evidence is entirely circumstantial and by implication, untrustworthy; that each of the incriminating circumstances is theoretically consistent with innocence; and he thus concludes that the trial court committed error in failing to direct a verdict of acquittal.

On a motion for a directed verdict, however, the government is entitled to every legitimate inference which may be derived from the evidence. *Curley v. United States*, 81 U.S. App. D.C. 389, 160 F.2d 229 (1947). "The presence upon the person or premises of articles, fragments, stains, tools or any resulting circumstances is constantly employed as the basis of an inference that the person did an act with which these circumstances are associated." *I WIGMORE, EVIDENCE* (3rd ed. 1940) § 149, p. 583-4.

The objection that the evidence is entirely circumstantial is devoid of legal significance since it is settled that a criminal conviction can be based on evidence that is wholly circumstantial. *Hardeman v. United States*, 82 U.S. App. D.C. 194, 163 F.2d 21 (1947). The rules of evidence simply fail to ascribe greater weight to direct

colored cap and an identification bracelet . . . In addition, two girls testified that on the night of the attack they had seen a man dragging a woman down the alley where the attack was alleged to have taken place and they identified the defendant as the man they had seen; they picked him out of a police line-up. *They did not say that they had ever seen his face, but they did recognize his clothing and build as those of the attacker.*" [Emphasis supplied] 109 U.S. App. D.C. at 76; 284 F.2d at 210.

The identification in the *Roberts* case, therefore, was no less circumstantial than the identification here.

evidence than to circumstantial evidence. *United States v. Smith*, 179 F. Supp. 684, *aff'd* in 109 U.S. App. D.C. 28, 283 F.2d 607 (1960); I WIGMORE, EVIDENCE (3rd ed. 1940) § 26 at p. 401. Professor Wigmore comments that so far as logic and psychology assist us, it is "out of the question" to prefer one class of evidence over the other". *Ibid*, p. 401.

The fallacy of the argument that each of the incriminating facts offered at trial may have been consistent with innocence is illustrated by the following passage from MCCORMICK'S LAW ON EVIDENCE:

"... A person, A, is suspected of a crime. The eye-witnesses, who did not recognize the criminal, were able to report certain facts about him, as to which we may estimate the probabilities that any unknown person would possess that particular mark. He was of medium height (one out of two), red-haired (one out of five), had a noticeable paunch (one out of three), and walked with a slight limp (one out of ten). The person suspected, A, has all of these characteristics. None of these traits is rare or unusual, and it may be argued as to each one separately that it is a mere ordinary coincidence that A and the unknown criminal both happen to be red-haired, and so on through the list. But the theory of probabilities brings this argument up short. Under that theory, in calculating the chances that A and the unknown are different persons, you do not merely add together the odds against the appearance of each of the several traits, but rather you multiply them. Accordingly, the odds against A's not being the criminal would not be twenty to one but three hundred ($2 \times 5 \times 3 \times 10$) to one. (At pp. 364-365)

Without attempting to assign numerical odds to the various factors which pointed to the appellant as the perpetrator of this crime, it is clear that even that evidence, taken alone, which showed that he and the rapist were both light-skinned Negroes, both were of medium height, both wore straw hats, and both wore red flower-printed sports shirts established their mutual identity with some degree of accuracy.

However, the baseball ticket dated August 15, 1961 and marked section Q, row four, seat 21 found at the scene of the crime added a new and devastating dimension of proof. Linked with the testimony which indicated that the appellant had used that very ticket on the night of the crime, it became overwhelmingly clear that the appellant and the perpetrator of the crime were the same person. Counsel both at trial and on appeal have appreciated the inevitability of the conclusion of guilt which the ticket stub required. In both instances, therefore, they have attempted to avoid the logical force of this evidence by claiming inconsistencies in the police testimony concerning the handling and possession of the ticket. This claim may have been available as an argument at trial; however, it is not a legitimate point on appeal. The conflicts in the testimony, if any, were properly resolved by the jury. Moreover, the testimony was in fact consistent.²

² The ticket was found in the room where the crime took place by Detective Bias. (J.A. 89). He left it there but pointed it out to Detective Holden of the sex squad who arrived later. (J.A. 89, 95). The alleged inconsistencies arose because Holden originally stated that he had kept the stub in his possession until he turned it over to Detective Bonaccorsy the following morning. (J.A. 93, 99). This testimony did not comport with the testimony of Sergeant Jones of the I.D. Bureau who stated that he had picked up the ticket from the steps in front of Mrs. Waters' house. (J.A. 128).

It was subsequently revealed that Holden had taken the ticket outside and had placed it on the front steps so that a K-9 dog could get the scent of Mrs. Waters' attacker. (J.A. 145). When Jones came on the scene, the dog had the ticket in its mouth. (J.A. 130). The dog's handler removed the ticket, placed it on the steps and suggested that Jones check it to determine whether it would yield fingerprints. (J.A. 130). Jones examined the ticket, decided that it would not show prints, then returned it to Holden. (J.A. 146).

The alleged inconsistencies arose therefore when Holden omitted to recount the details of this incident apparently and understandably assuming that the interlude had no evidentiary significance in the case.

But the government's proof did not stop with the ticket stub. It was also shown that green woolen fibers which could have originated from the rug upon which the crime was committed were found on appellant's clothes. It was further shown that semen stains and blood stains were found on appellant's trousers and shorts. The odds against the appearance by coincidence of all these incriminating facts in combination are so astronomical that it can be said that appellant's presence at the scene of the crime was established with scientific exactness.

II

The Prosecutor Did Not Comment On The Defendant's Failure To Testify

Appellant contends the prosecutor commented on his failure to take the stand. The record refutes this contention.

During the course of his rebuttal argument, the prosecutor stated:

"Whom did they present? You will recall they presented Wills, Jr., and first before Wills, Jr., counsel asked Bonaccorsy, didn't Wills, Jr. come to you and say, are you sure you got the right man and Bonaccorsy said, no, he didn't and they put Wills, Jr. on and he said, no, I didn't tell Bonaccorsy that."

(J.A. 190)

The above passage indicates that the rhetorical question, "Whom did they present?", referred to Wills, Jr., a witness the defense *did present*. It was not an observation that anybody, much less the appellant, failed to take the stand.

The prosecutor went on:

"You also heard the denial made to counsel by Washington when he asked the question. Who did they present, Members of the Jury? The wife and the wife said that he came home from the ball game and he went to the bathroom and he went to bed and

that he went to bed in his shorts and she said after much reluctance that government's exhibit No. 2-B are like the shorts that her husband wore and wears and after much reluctance she said the trousers are the trousers of the defendant." (J.A. 190).

Again the rhetorical question, "Who did they present?", referred to a witness, this time appellant's wife, who *actually testified* on behalf of the appellant.

The prosecutor continued:

"Now, Members of the Jury, they are trying to explain the stains on the trousers and the agent said the stains on the trousers are seminal stains and they bring the mother in and the mother says about two years ago, 1959, a customer gave her those trousers and counsel in his argument says that has not been rebutted. How can it be rebutted? Now, they could have presented, Members of the Jury—" (J.A. 190).

Concededly, here the prosecutor did advert to a witness who had not testified. But that witness was not the appellant. In order to appreciate the intent of the prosecutor's remark, the factual context in which it arose must be considered. At trial, appellant's mother, Mrs. Serena Jackson, had testified that a customer of the valet shop where she worked gave her the trousers in question; that even at that time they were stained; that the pants were also worn for a while by her other son; that ultimately she altered the trousers and gave them to appellant. (J.A. 175-176). These facts indicate that the defense could have produced at least two witnesses to corroborate Mrs. Jackson's story that appellant's trousers were stained prior to the date of the crime: the customer and appellant's brother. The absence of the customer was especially significant since he would have been the only disinterested witness to reinforce any part of the defense. These circumstances demonstrate that the prosecutor was merely attempting to show that the failure of the defense to produce these witnesses, both peculiarly available to the appellant, left Mrs. Jackson's story uncorroborated. Un-

deniably, this would have been proper.³ *Lawson v. United States*, 101 U.S. App. D.C. 332, 248 F.2d 654 (1957).

In *Peden v. United States*, 96 U.S. App. D.C. 27, 223 F.2d 319 (1955), a comment that testimony was uncontradicted was held not to refer to the defendant's failure to take the stand where the factual situation showed a far greater possibility that only the defendant could have contradicted the testimony involved. There the accused made certain admissions in the presence of three police officers. One of these officers testified to these statements at trial. In summation, the prosecutor pointed out to the jury this testimony was uncontradicted. This Court held that the comment did not impinge on the defendant's Fifth Amendment rights since the fact of the admissions could have been refuted by either of the two other policemen, and thus the remark was not necessarily a reference to the defendant's failure to testify. If the comment in *Peden* was held not to refer to the accused's failure to

³ However, not even this argument was permitted. On objection of defense counsel, the court immediately broke into the prosecutor's remarks and summarily foreclosed further discussion of missing witnesses:

"MR. SEWELL: I think this is improper. He said we could have presented—

"THE COURT: Ladies and Gentlemen, the defendant doesn't have to bring anybody in. You will determine whether the government has proven beyond a reasonable doubt the offense which the defendant is here charged with.

"MR. CAPUTY: May I make the statement, where is the witness, Members of the Jury, who—

"THE COURT: The question is, Ladies and Gentlemen, the defendant is not required to bring anybody in. You are going to determine this case on the evidence which the government has shown you and whether or not that proves beyond a reasonable doubt that the defendant is guilty as charged.

"MR. CAPUTY: Very well, Your Honor." (J.A. 190).

In view of the firmness of the trial court's immediate admonishment and corrective instruction, even if the prosecutor's remark could have been misconstrued as an abortive comment on the appellant's failure to testify, the error was cured. *Milton v. United States*, 71 U.S. App. D.C. 394, 110 F.2d 556 (1940); cf. *White v. United States*, No. 17183, D.C. Cir., decided November 21, 1962.

testify, then *a fortiori*, the prosecutor's argument in the instant case is not objectionable on that ground.

III

There Was No Error In The Trial Court's Instructions

During the course of his instructions to the jury, the trial judge observed:

"Counsel for the defendant has not challenged the fact that Meta Waters was in fact raped on the occasion in question. He says to you that this defendant was not the person who did commit the offense." (J.A. 194)

This statement was literally correct. In closing argument, counsel for appellant had stated:

"The only connection between this defendant and this rape, I think the government has proved beyond a reasonable doubt that Mrs. Waters was attacked by someone, that she was probably raped by someone but they have not proved beyond a reasonable doubt that this defendant did it.

"That is what you are here to judge. You are not here to judge whether she is telling the truth about this attack or this rape. That is not what you are to decide at all. You are to decide whether this defendant is the person who did it and the burden is on the government to prove that he is the one beyond a reasonable doubt . . ." (Tr. 2, Supplemental Record)

The appellant now contends that the comment of the trial court constituted error since it had the effect of depriving the appellant of the theory that the 80-year old victim of this crime consented. Brief for Appellant, pp. 34-35. But the record refutes this contention. The jury was specifically cautioned that they were required to find lack of consent beyond a reasonable doubt in order to find the appellant guilty. (J.A. 196). The jury was also told that they were the sole judges of the fact. (J.A. 191).

The trial court's observation merely supported the defense strategy of deflecting jury attention from the brutal and degenerate nature of this crime and focusing it where it belonged on the issue of this appellant's culpability. If by any stretch of the imagination this can be regarded as error, it was error of appellant's own engineering and he cannot complain. *Johnson v. United States*, 318 U.S. 189, 201 (1943).

Moreover, no objection to any part of the charge was noted at trial despite the fact that counsel for the defense was twice queried to determine whether he was satisfied. (J.A. 195). The objection now raised has therefore not been preserved for appellate review. Rule 30, Federal Rules of Criminal Procedure.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
VICTOR W. CAPUTY,
ROBERT A. LEVETOWN,
Assistant United States Attorneys.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Criminal Case No. 855-61

UNITED STATES OF AMERICA

vs.

CHARLES CLEMONS

Washington, D. C., February 21, 1962

BEFORE THE HONORABLE RICHMOND B. KEECH, United States District Judge, Excerpt of final argument by Mr. Sewell.

APPEARANCES:

VICTOR CAPUTY, Esq., for the Government.

WILBUR W. SEWELL, Esq., for the Defendant.

MR. SEWELL: Then Officer Bias gets back on the stand and says it is true that he saw the ticket and that he saw Officer Holden put it out there on the steps and all that but I just wonder why Mr. Caputy didn't comment on this.

This is a very serious case.

The only connection between this defendant and this rape, I think the government has proved beyond a reasonable doubt that Mrs. Waters was attacked by someone, that she was probably raped by someone but they have not proved beyond a reasonable doubt that this defendant did it.

That is what you are here to judge. You are not here to judge whether she is telling the truth about this attack or this rape. That is not what you are to decide at all. You are to decide whether this defendant is the person who did it and the burden is on the government to prove that he is the one beyond a reasonable doubt and you are to judge—to make your decision solely on the evidence that you got from the stand, from the mouths of

the witnesses and I have not practiced law too long, as long as a whole lot of people. I have been defending people and I was a formerly prosecuting with Mr. Caputy and I have never since I have been engaged in the practice of law, never heard the type of testimony as contradictory as this was, obvious lies coming out of the mouths of the police officers.

This record is certified by the undersigned to be the official transcript of the above proceedings.

/s/ DAWN T. COPELAND
Dawn T. Copeland,
Official Court Reporter

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,241

CHARLES CLEMONS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

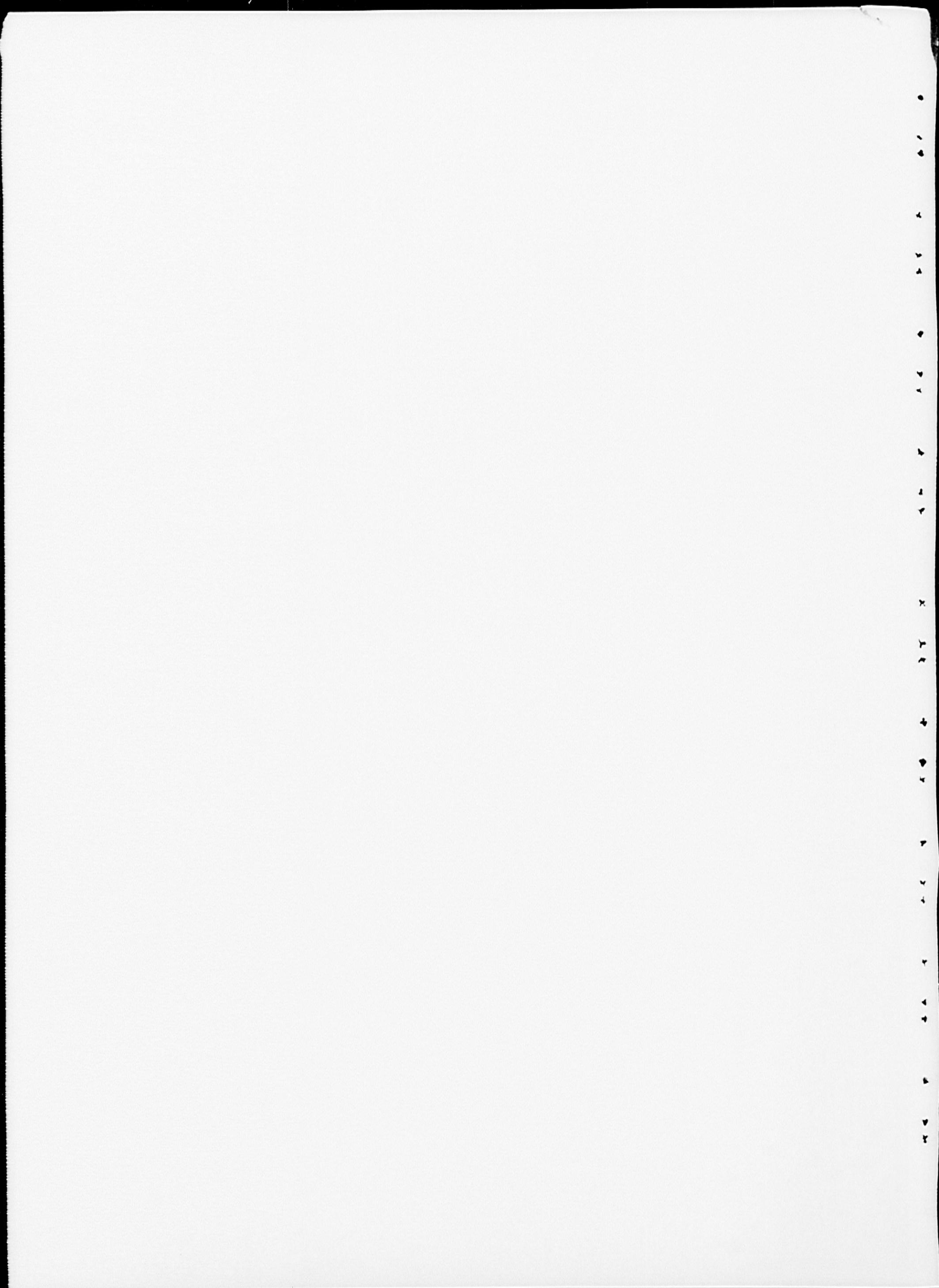
United States Court of Appeals
for the District of Columbia Circuit

FBI

OCT 17 1962

Joseph W. Stewart

CLERK



INDEX

	<u>Page</u>	
Excerpts from Transcript of Preliminary Hearing, September 1, 1961	1	
<u>Witnesses:</u>		
Angelo Bonaccorsy		
Direct	3	2
Cross	9	5
William R. Holden		
Direct	28	16
Cross	29	17
Angelo Bonaccorsy		
Further Cross	34	20
Further Cross	37	22
Indictment, Filed October 9, 1961	29	
Plea of Defendant, Filed October 13, 1961	29	
Excerpts from Transcript of Proceedings, February 19, 1962		
<u>Witnesses:</u>		
Meta Waters		
Direct	3	30
Cross	14	35
Ralph Cabbell		
Direct	30	43
Cross	32	44
Redirect	33	45
Robert L. Bouchard		
Direct	34	45
Cross	39	48
John L. Wilaj		
Direct	42	49
Cross	45	51
Meta Waters		
Recross	46	52
Robert Bleasdell		
Direct	47	52
Cross	51	55
Daniel Weiss		
Direct	53	56
Cross	58	58
James Richard Wills		
Direct	59	59
Cross	65	62
Redirect	76	67

Excerpts from Transcript of Proceedings (Cont'd.):

<u>Witnesses:</u>		<u>Tr. Page</u>	<u>J.A. Page</u>
Arthur Cox		76	67
Direct		85	71
Cross		92	74
Redirect		92	75
Recross			
Albert Dowe		93	75
Direct		98	77
Cross		103	79
Redirect		103	79
Recross			
Elmer Jackson		105	81
Direct		109	82
Cross		110	83
Redirect			
John J. Bias		112	84
Direct		119	88
Cross		125	91
Redirect			
William R. Holden		126	91
Direct		130	93
Cross		130	93
Direct (Further)		132	94
Cross (Cont'd.)			
Angelo S. Bonaccorsy		138	97
Direct		158	107
Cross		183	119
Redirect		185	120
Recross		186	121
Further Redirect		189	122
Recross (Cont'd.)			
Maxwell Washington		190	123
Direct		194	125
Cross		195	125
Redirect			
James H. Jones		195	126
Direct		198	127
Cross		201	129
Redirect		205	130
Recross			
John B. Kline		205	131
Direct		208	132
Cross			
Anthony O'Tousa		209	133
Direct		217	137
Cross			

Excerpts from Transcript of Proceedings (Cont'd.):

<u>Witnesses:</u>	<u>Tr. Page</u>	<u>J.A. Page</u>
Cornelius McWright		
Direct	220	139
Cross	225	141
Redirect	226	142
Recross	226	142
Meta Waters		
Recross	229	143
Redirect (Cont'd.)	230	144
William R. Holden		
Redirect (Cont'd.)	232	145
Recross (Cont'd.)	234	146
Redirect (Cont'd.)	240	149
Recross (Cont'd.)	240	149
Edward W. Clouse		
Direct	241	150
Cross	244	151
Robert Sandberg		
Direct	253	156
Cross	255	157
John J. Bias		
Redirect	258	159
Recross	261	160
Redirect (Further)	264	162
Vernie E. Tate		
Direct	267	164
Cross	271	165
James Wills, Jr.		
Direct	272	165
Valorie Clemons		
Direct	278	166
Cross	278	166
Cross	281	168
Serena Jackson		
Direct	291	173
Cross	297	175
James Wills, Jr.		
Redirect	301	177
Rebuttal Argument		
.	330	183
Charge by the Court		
.	344	191
Judgment and Commitment, Filed March 30, 1962		
		198



JOINT APPENDIX
IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA)
 Plaintiff)
)
 v.) Criminal Action No. US-5792-61.
)
CHARLES CLEMONS,)
)
 Defendant)

[Filed Sept. 27, 1962]

EXCERPTS FROM TRANSCRIPT OF PRELIMINARY HEARING

1

Washington, D. C.,
Friday, September 1, 1961.

The above-entitled matter came on for preliminary hearing before Judge Austin L. Fickling, presiding in the United States Branch Courtroom No. 11, Criminal Division Building, at approximately 10:40 o'clock a. m.

APPEARANCES:

On behalf of the Government:

Richard M. Coleman, Esq.,
Assistant United States Attorney

On behalf of the defendant:

Wilbur W. Sewell, Esq.,
610-A Fifth St., NW.,
EX 3-2858.

* * * * *

3 THE DEPUTY CLERK: All witnesses in the case of Charles Clemons step up, please.

(Witnesses approached the counsel table.)

MR. COLEMAN: The Government is ready, your Honor.

THE COURT: All right. Swear the witnesses.

THE DEPUTY CLERK: Raise your right hands.

(Thereupon, two witnesses were duly sworn.)

MR. COLEMAN: The Government calls Officer Angelo Bonaccorsy.

EVIDENCE ON BEHALF OF THE GOVERNMENT

Thereupon

ANGELO BONACCORSY

was called as a witness for and on behalf of the Government and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COLEMAN:

Q. Officer, would you state your name and your assignment, please?

A. Angelo Bonaccorsy, assigned to the Sex Squad, Metropolitan Police Department.

Q. Did you receive a report on August 15, 1961, in the late hours concerning a rape? A. The office was in receipt of it. I personally did not respond.

4 Q. Were you in charge of the investigation on that? A. Yes.

Q. Would you tell the Court the results of that investigation -- the report of the results of that investigation? A. Well, about 12:20 a. m. on August 16 Detective Holden, working the midnight tour of duty, responded to 1213 Eye Street, Northwest. On his arrival there, he interviewed the complaining witness.

MR. SEWELL: Of course, your Honor, I'm going to object to this.

THE COURT: On what ground?

MR. SEWELL: Well, where is Officer Holden. I mean, he wasn't there and now he's testifying to what Officer Holden did. I don't see how he can testify to that. I object to it. Officer Holden ought to be here to testify to what he's testifying to now. He's the best evidence that we could get on that. I don't see how Officer Bonaccorsy can testify to what Officer Holden did when he wasn't there.

MR. COLEMAN: Your Honor, this is a preliminary hearing and I believe that hearsay is admissible in a preliminary hearing. Officer Bonaccorsy is in receipt of all reports from these officers and he

coordinated this investigation, and it's he who has the most pertinent information concerning the suspect.

5 THE COURT: It seems to me that this is hearsay second removed. I think we ought to have the other officers who actually made the investigation. If this testimony is based primarily on this officer's conversational testimony of other officers who investigated, I don't think it's going to be sufficient. I may as well advise you now.

MR. COLEMAN: Very well, your Honor. May I have your Honor's indulgence a moment?

THE COURT: All right.

(Pause)

BY MR. COLEMAN:

Q. Officer, did you have occasion yourself to interview the complainant? A. Yes, sir.

Q. Would you tell us the results of that interview? A. Yes, sir.

My interview with the complaining witness -- she related to me that in the early evening hours of August 15, she had been to the National Theatre; she returned home about eleven p. m.; went to the rear of the -- rear kitchen of her address 1213 Eye Street, where she prepared a sandwich for herself. She changed her clothing, put her night clothing on and was returning to the front room of her apartment when she was grabbed by an unknown person. This person covered her face with a

6 handkerchief and told her not to scream or he would kill her. He then forced her into the front room, the living room of her apartment and, when in the living room, he hit her in the face and knocked her to the floor. While she was on the floor, he held her there and had intercourse with her.

On the scene of the incident was found a raincheck from a baseball ticket. With this ticket in our possession, I, in company with Detective Clouse of Number 1 Precinct, went to the office -- the personnel office of Griffith Stadium to ascertain if perchance this ticket could have been a season ticket.

We interviewed the personnel manager there -- the business manager -- and ascertained from him that, as a matter of fact, the Stadium sold a block of tickets corresponding to this section -- this particular section, this particular row, and these particular seats, and they were in fact Section Q, Row 4, Seats 19 through 24, and that these tickets were sold to Glass Distributors, Incorporated.

With that information, we went to the Glass Distributors, Incorporated, and there interviewed the personnel manager and established from him that they did in fact purchase these tickets corresponding to these numbers and that they distributed the tickets to their employees.

7 While there, we interviewed each employee who attended the baseball game with these particular tickets. We recovered all but one ticket and that ticket was Seat Number 21. From the employees -- from the other five, we ascertained that Seat 21 was occupied by one Charles Clemons.

We interviewed Charles Clemons at that address on the job to ascertain if he had his raincheck from that baseball game the prior evening, August 15, after learning that he had attended that game from the defendant. He searched his pockets but was unable to produce this baseball stub, this raincheck, and at that time he advised us that perhaps he had left it in his clothes at home, the clothes that he was wearing on August 15 when he did attend this baseball game.

At that time he was asked if he would like to call his home to have his wife look for this ticket stub. At that time he acknowledged that he would like to do this, and he was allowed to use a telephone and he did call his wife and, after a conversation with his wife, he advised us that she was unable to find this stub.

At that time I explained to Mr. Clemons the seriousness of this incident and that this stub was quite important. Of course, if he could produce this stub, why, of course, then that would relieve him of the responsibility of this incident.

At that time we asked him if he would like to go home himself to

look for this baseball stub and he replied that he would. We asked him if he would like to have a ride over there. He replied again in the affirmative.

8 We took him -- we drove him to his address on H Place, Northeast -- 1810 H Place, Northeast, at which time he opened his door -- his front door -- with a key. We accompanied him to his apartment. He searched the clothes that he alleged he was wearing on the night of August 15 but was unable to locate this ticket stub.

At that time we placed the defendant under arrest and took him to Police Headquarters.

Q. Did you have a description from the complainant of the clothes the man was wearing? A. Yes. She described her assailant as a Negro. She said she did not see his face as he kept it covered up and kept her turned away from him; so, she could not see his face. But she did see his clothing, and she described his clothing as a red short-sleeved sport shirt with a flower design, dark colored trousers, and a light colored straw hat with a small brim.

Q. And, in fact, the clothes that the defendant said he was wearing that night -- did they meet this description? A. Yes; they did. The shirt he was wearing was a short-sleeved red sport shirt with a small design; the slacks were gray flannel, and the straw hat was a light gray with a small brim.

MR. BEST: I believe that's all the Government has of this witness.

9 THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Officer Bonaccorsy, you say this man searched through his clothes at work to see if he had his ticket. He didn't do that; did he?

A. He looked through his pockets.

Q. As a matter of fact, didn't he tell you that his stub was probably in his shirt pocket of the shirt that he wore when he went to the game?

A. He did say that after he looked in his clothes that he was wearing and it wasn't there. Then he told us that they were probably -- it was probably in the clothes that he wore the night before.

Q. And he called his wife; is that right? A. Yes; he did.

Q. You were listening to the conversation; weren't you? A. No; I wasn't listening. I was out of hearing distance.

Q. Weren't you on an extension? A. No.

Q. And did you ask him if he wanted to go home to look for his ticket? A. Yes; I did.

Q. Didn't he ask you then, "What's all this about?" A. Yes, he did.

10 Q. And didn't you tell him that there was a little trouble at the ball park? A. I told him we had had some trouble involving tickets from the ball park.

Q. You didn't tell him anything about any rape; did you? A. At that time no.

Q. All right. Then when you got home with him, he looked in his clothes and went through them and didn't find it, and then he went back out to the car with the other officer and you stayed back and talked to his wife; is that right? A. I stayed back and talked to his wife.

Q. You did not place him under arrest then; did you?
A. I placed him under arrest when I joined he and Detective Clouse.

Q. Didn't -- wasn't there a lieutenant involved in this case and didn't you and Detective Clouse drive somewhere down to the corner and meet the lieutenant? A. Yes; we did.

Q. And didn't the lieutenant state to Clemons, "Clemons, you're not under arrest and I want you to know that you can go out of this car, but I would like for you to help us"; didn't he? A. He may have.

11 Q. Didn't you hear him? A. No; I didn't hear him say those words.

Q. Where were you? A. I was in the car.

Q. If the lieutenant had said it, you would have heard him; you were within hearing distance; weren't you? A. Yes. I was within hearing distance.

Q. Did you take Clemons down to the lineup?

(No audible response.)

THE COURT: Don't shake your head, Officer.

THE WITNESS: Yes.

BY MR. SEWELL:

Q. When did he put on the clothes that he had on at the ball game and that he had on in the lineup? When did he put them on if you arrested him immediately after he couldn't find his stub? When did he put his clothes on? A. He was asked -- as you brought out, we did meet the lieutenant --

Q. Yes. A. -- and at that time the lieutenant asked Clemons if he would like to go back home and put these same clothes on.

Q. Did you hear him say that? A. Yes.

Q. Didn't you hear him also say, "You are not under arrest; you can get out of this car and walk away?" A. No; I don't recall hearing that.

Q. Did you hear the lieutenant ask Clemons if he would cooperate with the police and try to help them? A. No; I didn't hear him say, "Would you cooperate with the police." I did hear the conversation to the effect that if -- Clemons was, of course, pleading his innocence, and I think the lieutenant told him that if he was innocent, then he had nothing to hide or fear and would he go back and put these clothes on, and the defendant answered, "Yes."

Q. All right. And he went back and put on the same clothes that he had on at the ball game and then you put him in the lineup; didn't you? A. Yes, sir.

Q. And you had three other persons in that lineup. It was three or four. A. There were three others; yes.

Q. How many of them had on red sport shirts? A. One other.

Q. One other. Was he a policeman? A. Yes.

Q. Was he about thirty-five, light brown, medium build? A. He was -- he is medium built; he is about thirty-five.

Q. Have a hat on? A. No, sir; I don't believe he had a hat on.

13 Q. Did any of the other persons in the lineup have a hat on?

A. I can't honestly say. I think one other person had a hat.

Q. All right. Clemons had a hat on; didn't he? A. He had a hat on and he -- we also asked him to take it off so that at one time they were all bare headed.

Q. All right. Now, in your prior testimony, this woman didn't -- didn't I understand you to say that she didn't see his face? A. That's correct.

Q. So, she was identifying him by his hat. A. She was identifying his clothes.

Q. Well, did she identify the man? A. No; she did not.

Q. And didn't she tell you that the hat was much larger than that one? A. No; she did not.

Q. What did she tell you? A. She said that the -- she saw a person in that lineup that looked more like the person that assaulted her than --

Q. Than Clemons. A. No. No. No. No. Didn't say that. She said -- when she pointed to Clemons, she said that he looked more like 14 the man than the others in this lineup.

Q. At which time did she do that? You took her there three times; didn't you, to get a closer look and she never identified him; did she?

A. No, sir.

Q. Which one of those times did she say that? A. On the third time in the room.

Q. And prior to that, hadn't she said, "Well, I've seen this man somewhere," talking about one of the other men in the lineup? A. Yes; she did.

Q. And what happened then? Tell us that conversation.

A. Nothing. When we brought her back into this lineup room, she pointed to one of the subjects in the lineup and she says, "Oh, I know him."

Q. And the man said, "Well, I don't know you;" didn't he?

A. I believe that was --

Q. Officer Bonaccorsy, why is it you can't remember some of these things and you can remember others so well? A. I can't remember the conversations verbatim.

Q. Well, you remembered what the defendant said -- what the complaining witness said to you verbatim. A. Yes. Sure. I have that written down.

15

Q. That's in affidavit form; isn't it? A. No.

Q. It's not? She didn't write it down? A. No.

Q. You wrote down what she said to you. A. That's correct.

Q. Did she sign it? A. No.

Q. So, those are your words that you were telling us.

A. No. No. Not my words.

Q. Well, now, did the woman say in her statement that the man went into the bathroom and while he was in the bathroom she ran out and an unidentified person called the police? A. No; she didn't say the subject ran in the bathroom.

Q. No; she said he went in the bathroom and while he was in there, she ran out and -- A. No, sir. She didn't say that. To me she didn't say that.

Q. Well, isn't part of her statement -- isn't this -- may I read this statement and see what in fact she told you? A. Go ahead.

Q. (Reading) This woman reports that about eleven p.m., August 15, instead of returning to her home in Virginia after attending a party at the National Theatre -- a play, I mean, at the National Theatre -- she decided to go to her business address, the Water's Employment Agency,

16

1213 Eye Street, Northwest, to spend the night as she had done before. She went into the rear bedroom and removed her clothes and fixed a sandwich. When she finished, she went out into the hallway to go to the front of the house and there a Negro male, about thirty-five years, five-eight, medium build, light brown skin, wearing a light colored straw hat and a red print shirt, grabbed her around the throat and put a handkerchief over her face.

All right. So far she told you all that.

A. Yes.

Q. (Continuing Reading) He told her not to scream or he would kill her and for her to just walk with him. They walked to the second

room on the first floor, where this man hit in the face, knocking her to the floor and then he had sexual relations with her.

All right so far? A. Yes.

MR. BEST: Your Honor, this is all repetitious. Unless counsel has something special in mind, this all has been testified to already.

THE COURT: Overruled.

BY MR. SEWELL:

Q. (Continuing reading) When he released her, he asked her if she had any money.

17 Is that right? A. Yes.

Q. (Continuing reading) Then the man went into the bathroom, which is off the same rooms; the complainant ran from the building and asked two unidentified citizens to call the police.

Now, did she tell you that? A. No, sir. She didn't tell me that.

Q. Well, now, in your testimony you said she made the statement to you. A. Yes; she did make a statement to me. She also made it to several other officers.

Q. To your knowledge, sir, did she tell anybody that he went into the bathroom? A. Yes.

Q. All right. Now, where, Officer Bonaccorsy, on the scene did you find this stub? Did you find it yourself first? A. No, sir.

Q. Well, now, who found it? A. Detective Holden.

Q. Well -- A. In company with the other officers on the scene.

MR. SEWELL: You see, your Honor, I think all of his testimony about that stub should be stricken because Officer Holden, if he found the stub, he should be here. The Government should have had him here,

18 I think.

THE COURT: You finish your cross-examination now.

BY MR. SEWELL:

Q. You didn't find the stub; so, you don't know where it was found on the scene. A. I know where it was found, but I didn't find it.

Q. At what time did you arrive there, Officer? A. I arrived the

following -- or, that morning -- later that morning, about 9:30 actually.

Q. You didn't go there that night at all. A. No, sir.

Q. Well, were you able to fix a time when this incident occurred?

A. Only by the complaining witness' testimony. She approximates the time at eleven p. m.

Q. All right. Now, did you ascertain, when you went to the ball park, what time the ball game was out that Tuesday night? A. Yes. The ball game, according to the defendant, was over before eleven o'clock, about quarter of eleven.

Q. Well, now - the defendant told you that? A. Yes.

Q. And did you ascertain from the ball park office what time the game was over? A. No, sir; I did not.

19 Q. Did you ask anybody up there? A. At the ball park office?

Q. Yes. A. No, sir.

Q. Isn't it -- as a matter of fact, wasn't the ball game over closer to eleven o'clock or five minutes after eleven than it was at quarter of eleven? A. I don't know, sir.

Q. You didn't look anywhere to ascertain when the game was over. A. I asked Clemons and the other people sitting in that row of seats.

Q. And did the other people tell you that Clemons remained at the game during the entire game? A. Yes.

Q. And didn't they all tell you also that the game was over at eleven o'clock? A. They all told me the game, the best they could remember, was over somewhere in the vicinity of 10:45, quarter of eleven.

Q. All right. Now, would you say that a person could get out of the ball park and go down to Twelfth and Eye even if the game was over at quarter of eleven and commit this act at eleven o'clock? A. Do I think so?

20 Q. Yes, sir. A. Yes; I do.

Q. Well, now, in discussing Clemons with the other fellows at the ball game, did you find anything about his movements -- did you find out anything about his movements from them? A. Yes.

Q. What did they tell you? A. They said that upon completion

of the game, they all started to leave the ball park together; that is, the five or six, I believe, of them. As they were actually leaving the ball park; that is, when they got out to the sidewalk area, why, they went their separate ways and they didn't know which way Clemons went.

Q. They told you that. A. Yes; they did.

Q. And which one of them told you that? A. Each of them told me that.

Q. Well, name the persons you talked with at the game.

A. Well, I would have to get my notebook and it's at the office. I have all the names in that. I neglected to bring that over here, but I have it.

Q. Well, see if I can refresh your recollection. Did you talk with Cox? A. Yes.

21 Q. And Cox told you that? A. Yes.

Q. And did you talk with Wills, Senior? A. Yes.

Q. And you talked with a cab driver? A man driving a Metropolitan Cab? A. No. No; didn't talk to him.

Q. Did you talk with Butts? A. Well, that's the nickname. That wasn't his true name.

Q. Well, you talked with a man whose nickname is Butts. A. Yes.

Q. And did Butts tell you that he had a friend who attended the game with him, a man who was driving a Metropolitan cab? A. Yes.

Q. Did you check that man out? A. Yes.

Q. And -- A. Not personally.

Q. Personally. A. No. No. Not personally.

Q. Who did it? A. Butts. We took Butts to the home of the cab driver.

22 Q. And you say that each went their separate ways and Butts told you that? A. Well, Butts -- when I say that, Butts and his cab-driving buddy -- they left together.

Q. As a matter of fact, Officer, didn't Butts tell you that he and Clemons and all of them were to go home in this cab; this cab driver was going to take them all home? A. He said they were to do that; yes.

Q. All right. A. But they did not.

Q. You say they left -- your testimony is that they left the ball park, got out on the sidewalk, and went their separate ways. A. I said in the sidewalk area. When they got out of the gates, then Butts and his buddy went one way, and Wills and Taylor, I believe the other man's name is, went another way, and the defendant went his way. They don't know which way he went.

Q. Now, what did the defendant tell you? A. The defendant told me that he went directly across the street to Ann's Hot Dog establishment, where he ate either a hot dog or a hamburger -- I don't recall just what he ate -- and from there he took a streetcar south on Seventh Street to K, where he transferred at K Street onto a bus and took the bus out Benning Road to the stop which is closest to his residence.

23 Q. Well -- it doesn't matter, Officer -- but didn't the man tell you he got the bus -- that the buses were lining up by the ball park and he caught one and rode down Seventh Street on a bus? A. It may have been a bus and I said streetcar.

Q. Were fingerprints taken from this place? "Yes" or "no." You can answer that. Did they take fingerprints out at the Water's Employment Agency? "Yes" or "No." A. Well, yes.

Q. Now, had the fingerprints been compared with Clemons?
A. No.

Q. Well, did you find fingerprints there other than the owner's, other than the person who operates the agency? A. That wasn't -- we weren't able to determine whether they were other than the owner's. Perhaps were.

Q. You made no effort to see if Clemons' fingerprints were in that place? A. Oh, yes. They did make an effort to see if his fingerprints were in there.

Q. And, apparently, they were not there. A. They were unidentifiable.

Q. You mean the prints you found were not his and you don't know

whose they are. A. No; I didn't say that. I say the latent prints found
24 on the scene were unidentifiable.

Q. Were they smudged or something? A. Apparently so. I
couldn't testify to that. The Identification Bureau expert would have to
testify to that.

MR. SEWELL: Indulge me just a moment.

(Pause)

BY MR. SEWELL:

Q. Officer, did you personally collect these stubs, other than the
one that was found on the scene? A. I personally collected all but one
and that one was when we took Butts to his cab-driver friend; Butts got
it from that person.

Q. Did you ascertain, sir, whether the person actually used the
seat his stub called for? A. The defendant's?

Q. Any of them. A. Yes.

Q. Did each one of the six persons use the seat that was called
for? A. Yes.

Q. You're sure of that? A. No; I'm not sure. I am just taking
their word for it.

Q. Well, now, have you got a list there where they were sitting?

25 A. I don't have it here, sir. It's in my notebook.

Q. Well, now, Q 24 -- Section Q, Row 4, Seat 24 --- that seat
was formerly occupied by a man named Elmer Jackson; is that right?
A. I again have to tell you that I have all this information in a notebook
and I don't recall.

Q. Well, maybe you can. Do you remember Elmer Jackson?
Didn't you check his ticket out? A. I don't recall the name Elmer --

Q. He's the father-in-law of this defendant. A. Well, I picked up
a ticket stub from the home of the stepfather, I believe it is.

Q. Yes. That's right. You talked with him; didn't you? And he
didn't even sit in that section at all. A. No, sir; I didn't talk to him.

Q. Who did you talk to? A. I talked to his wife.

Q. Well, wasn't he home? A. No, sir.

Q. Well, have you ascertained whether he actually used that seat?

A. I interviewed his wife and she told me that he did attend the ball game and, as far as she knows, he sat in that seat, but the other people told me that the man was sitting in that seat.

26 Q. Told you that Jackson was sitting in that seat. A. Yes.

Q. Who told you that? A. Each of the ones we interviewed.

MR. SEWELL: I have nothing further.

MR. BEST: No further questions, your Honor.

THE COURT: Where is Officer Holden?

THE WITNESS: He's on his day off today, sir. He is available though.

THE COURT: He's available?

THE WITNESS: Yes.

THE COURT: All right. Step down.

(The witness left the stand.)

MR. BEST: Your Honor, that is the Government's case. I believe that the testimony that was objected to by defense counsel, as far as Officer Holden, does not fall within your Honor's comments on double hearsay. This wasn't words from the complainant to Holden to the officer. This was Holden's account to the officer himself. Therefore, I feel that's certainly admissible in this case. I feel we have met the preliminary hearing standards.

MR. SEWELL: Well, it doesn't -- the comment about Holden and the stub doesn't fall into double hearsay maybe, but that's the only thing -- the only shred of evidence that connects this man with the possibility of this thing and, of course, we have an officer up here on the stand -- we

27 don't know where he got it from. I think it goes a great deal beyond the rule to just have somebody come in here and say, "I have the stub" and they can't put on the record where the stub was obtained from; where on the premises, if on the premises, it was obtained. They went to the ball park. Maybe they didn't find it there. But they could have found it next to Seat 21. I think that --

THE COURT: If Holden is available, I will request that Holden be present. I'll pass this until Holden gets here.

MR. SEWELL: All right.

(Thereupon, at 11:15 o'clock a.m., the matter was continued until 1:45 o'clock p. m., the same day.)

28

AFTERNOON SESSION

(At the expiration of the noon recess, the proceedings were resumed as follows:)

THE COURT: We want to restrict this officer's testimony to the question of the ticket.

MR. BEST: Yes, your Honor.

Thereupon

WILLIAM R. HOLDEN

was called as a witness for and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BEST:

Q. Would you please state your name and assignment? A. William R. Holden, Detective, assigned to the Sex Squad, Metropolitan Police Department.

Q. Did you have occasion to go to 1213 Eye Street, Northwest, in the District of Columbia, in the late hours of August 15 or the early hours of August 16? A. I did, sir.

Q. What time did you arrive there? A. Oh, I'd say around 12:30 a. m.

Q. While on those premises, what did you find on those premises? A. I found a baseball ticket that had been sold on August 15 -- for the game of August 15.

Q. What did you do with that ticket? A. I took the ticket and turned it over to Detective Bonaccorsy the next morning.

MR. BEST: That's all.

THE COURT: Cross-examine.

29

CROSS EXAMINATION

BY MR. SEWELL:

Q. Officer Holden, did you personally find the ticket? A. Yes; I did.

Q. Where did you find it? A. On the living room floor where Mrs. Waters pointed out that she had been raped.

Q. Had there been anybody else in that room before you got there, to your knowledge? A. Well, yes, several police officers.

Q. Had any of those police officers -- were they uniformed men?

A. Had any of them been?

Q. I say, were they uniformed men? A. Yes. Well, some of them were.

Q. Do you know -- when they have ball games, they call officers from all over the city. Had any of those officers been on duty at Griffith Stadium that night? A. No, sir. This would be a midnight man.

30 Q. Well, now, what time did you get the call? A. Somewhere around twelve, twelve-thirty.

Q. You arrived there at twelve-thirty. A. I would say around 12:30. I don't know the exact time of the call.

Q. Were you the first officer on the scene? A. No; I wasn't.

Q. Who beat you there? A. There were several there.

Q. When you got there. A. Yes.

Q. What I'm trying to ask you: Are you the first officer to have talked with the complaining witness? A. No; I'm not.

Q. Incidentally, where is the complaining witness? A. Where is she?

Q. Yes.

MR. BEST: Objection. This is beyond the scope of the direct examination. It is irrelevant to this inquiry which is only for the purpose of determining whether there is probable cause.

MR. SEWELL: How can it be irrelevant to ask where the complaining witness is when she made the complaint that's holding this man that's charged?

31 MR. BEST: Your Honor, it's beyond the scope of the direct examination, as well.

MR. SEWELL: I withdraw the question. I'll try to get Bonaccorsy back.

BY MR. SEWELL:

Q. What I'm trying to find out is: Are you the first officer who talked with the complaining witness? A. No; I'm not.

Q. Had she pointed out to someone -- some other officer where she had allegedly been raped before you got there? A. I couldn't tell you that, whether she had or not. She told me that it was on the living room floor.

Q. Well, who was the officer who was in there prior to your going there? A. Well, there were several.

Q. Can you name one of them? A. Yes. I'd say Bies and Acree.

Q. What precinct are they in? A. Number 1.

Q. How about Detective Clouse? A. Who?

Q. Clouse from Number 1. A. Clouse?

Q. Yes. A. No. I believe Detective Clouse and Bonaccorsy got together the next morning.

32 Q. So, are you saying that the only officers who preceded you there were uniformed officers? I take it these officers are in the squad car. A. No. there was a squad car there and there was also plainclothesmen there.

Q. Who were the plainclothesmen? A. I say Bies and Acree.

Q. What squad are they on? A. Number 1 Precinct detectives.

Q. To your knowledge, had they talked with the complaining witness? A. I'd say they had; yes.

Q. And, to your knowledge, had she pointed out to them where she had been raped? A. I can't say whether she had or not.

Q. Now, if the ticket was still on the floor, Officer Holden, apparently, you were the first officer to have visited that room and to find the ticket.

A. I was the first officer that found the ticket; yes. Now, whether they had been in the room or not, I don't know.

Q. Well, was the ticket in plain view? A. Yes; it was.

Q. Did you see it as soon as you walked in the room? A. No; I didn't see it as soon as --

33 Q. Where is the ticket? A. Where is the ticket?

Q. Yes, sir, now. A. I don't have any idea. I imagine Detective Bonaccorsy has it.

Q. Now, what did you do with that ticket that night? A. I kept it in my possession.

Q. All right. Then what time did you turn it over to Bonaccorsy the next morning? A. Eight o'clock or eight-thirty the next morning.

Q. Were you one of the persons that checked the ball park with him? A. No; I did not.

Q. You went off duty. A. That's right.

Q. When you talked with the complaining witness, did she tell you that the man went into the bathroom? A. Yes; she did.

Q. And did you relate that to Officer Bonaccorsy?

MR. BEST: Objection. Beyond the scope -- I'm sorry; finish your question.

BY MR. SEWELL:

Q. Did you relate that to Officer Bonaccorsy?

MR. BEST: It's beyond the scope of the direct examination, your Honor.

34 THE COURT: I'll sustain the objection.

MR. SEWELL: That's all I have, your Honor.

THE COURT: All right. Step down, Officer.

(The witness left the stand.)

MR. SEWELL: May I have Officer Bonaccorsy return to the stand?

THE COURT: Call Officer Bonaccorsy back.

May this officer be excused?

MR. SEWELL: Yes, sir,

THE COURT: You may be excused.

The reupon

ANGELO BONACCORSY

was recalled as a witness and was examined and testified further as follows:

FURTHER EXAMINATION

BY MR. SEWELL:

Q. Officer Bonaccorsy, you were in charge of this case. A. Well, I'm not in charge of it; no, sir. Assigned to the investigation.

Q. I say, you're in charge of the investigation. A. No, sir.

Q. Who is? A. The Commanding Officer of the squad is in charge of it.

Q. Yes, but he turned it over to you. A. That is correct.

35 Q. So, then -- A. But he's in charge.

Q. Well, now, did you -- I assumed the complaining witness would be here -- A. She's here.

Q. Where is she? A. She's in the building. Not in the courtroom at this time. She was in the courtroom this morning.

Q. May I see the stub that you have? A. I don't have it on me.

Q. The stub -- the baseball stub. A. That's in the possession of the property clerk of the Police Department, being held as evidence.

Q. Well, now Officer Bonaccorsy, you knew you were coming to a hearing and the ticket is your link between this man and the crime. Are we to take your word that you have that ticket in holding this man for the action of the grand jury?

MR. BEST: Objection. This is bullying the witness.

MR. SEWELL: Well, your Honor, I think we need to see the ticket. I mean, they say -- and, of course, I assume that it is true -- that a ticket dated on that date for that seat was found by them. Now, he has all the other stuff for this case. I think if your Honor would have it brought it over from the property clerk's office so we could see the ticket --

36 THE COURT: Is there anything other that you want? Is that all you want?

MR. SEWELL: Well, if there is anything else.

BY MR. SEWELL:

Q. You didn't find anything else on the scene; did you?

A. I wasn't on the scene on that night.

Q. I know, but was there anything else that was found and that has been turned over to you? A. No.

Q. Do you have a copy of the fingerprints? A. No, sir.

MR. SEWELL: (Addressing the Court) No, sir; that's all I want.

THE COURT: The only thing you would want is the ticket.

MR. SEWELL: Yes, sir.

THE COURT: I'll instruct the officer to produce the ticket.

THE WITNESS: Yes, sir.

MR. SEWELL: I would like to get the complaining witness up here, too, your Honor, to see if she can identify this man.

THE WITNESS: Your Honor --

MR. SEWELL: She's here in the building.

THE COURT: I understand, but the officer has already testified that she could not identify him. So, I don't think there is any reason to produce her.

MR. SEWELL: All right.

MR. BEST: Will your Honor excuse the officer to go get the ticket?

THE COURT: I'll excuse the officer to get the ticket and to produce the ticket. We'll pass this until the officer returns.

(Thereupon at 2:00 o'clock p. m., the matter was suspended until 2:30 o'clock p. m., at which time the proceedings were resumed as follows:)

THE COURT: All right, Officer.

Thereupon,

ANGELO BONACCORSY

returned to the witness stand and was examined and testified further as follows:

FURTHER EXAMINATION

BY MR. SEWELL:

Q. Officer Bonaccorsy, may I see the --

(The witness hands stubs to counsel.)

(Pause)

Q. Now, which one did this defendant -- turns up as this defendant's?

A. On the scene of the crime?

Q. Yes.

38 (The witness hands stub to counsel.)

Q. This one.

(Pause)

Q. According to the initials on this, all the rest of the tickets, you recovered them; is that right? A. Yes. They were turned over to me. Those that I did not recover personally were turned over to me.

Q. But your initial is on the back of all five of them. A. Yes. Yes. Yes, sir.

MR. SEWELL: I would like for the record to show that we have six stubs for Section Q, Row 4, Seat 19, 20, 21, 22, 23, and 24; that's for the lower grandstand; good only on Tuesday night, August 15, 1961.

I also would like the record to show that the ticket for seat 21 was identified by Officer Bonaccorsy as the ticket allegedly found at the scene of this crime; that it has on the back of it the initials W. R. H. 8/16/61; it also has on the back the initials -- what's that? A. S. B.?

THE WITNESS: A. S. B.

MR. SEWELL: -- A. S. B. 8/16/61. Let the record show that all the other stubs have only the initial A. S. B. 8/16/61.

(Counsel returns the stubs to the witness.)

BY MR. SEWELL:

39 Q. Now, Officer, did you take or did somebody from the Sex Squad take some of these persons who held some of those stubs to the ball park to have them point out to you the seats which they used? A. If I understand you correctly, you are asking me did I take any --

Q. Or someone -- A. From the Sex Squad.

Q. At your direction, or anybody else at your direction, take some persons from Glass Distributors up to Griffith Stadium and have them point out the seats that were occupied by each person present.

A. No, sir; I did not.

Q. Well, did anybody to your knowledge do that? A. No, sir.

Q. They didn't do that? A. To my knowledge, no one did.

Q. And what's the first stub you received of the six you got?

A. Well, the first I received was Seat 21.

Q. All right. A. The one which was occupied by the defendant.

Q. All right. You got that at what time? A. In the vicinity of 8:30 a.m.

40 Q. And what did you do? A. I initialed it in turn.

Q. And then what did you do? A. Then I proceeded with the investigation that I testified to this morning.

Q. You went to the ball park. A. No. I went to the complaining witness' address first.

Q. All right. How long were you there, sir? A. I couldn't tell you exactly how long I was there.

Q. All right. Would you say you were there an hour? A. (Pause) I don't think I was there an hour.

Q. Forty-five minutes or thirty minutes? A. In the vicinity of forty-five minutes to an hour.

Q. When you left there, where did you go? A. To the ball park office.

Q. You went to the ball park office. They were open at that time of the morning; that would make it around 10:30. A. Yes.

Q. They were open. A. Well, I don't know whether they were open

for business, sir, but there were people in there and they admitted me --

Q. All right. A. -- and the person I was with.

41 Q. To whom did you talk? Do you know the name of the man you talked with up there? A. Yes.

Q. Who? A. (Pause) I don't seem to have that in this book. I'm sorry.

Q. Well, can you tell us how long you remained there?

A. Oh, I imagine it was fifteen, twenty minutes, just long enough for him to check his files.

Q. While there, did you go out into Section Q? A. No, sir.

Q. All right. When you left the ball park, where did you go?

A. To 1741 Johnson Avenue, Northwest.

Q. That is Glass Distributors; isn't it? A. That's correct.

Q. And about what time did you arrive there, Officer?

A. I couldn't tell you, sir. We went directly there from the ball park.

Q. Around in the vicinity of eleven or eleven-fifteen?

A. I couldn't even estimate the time.

Q. And you talked with the personnel manager there; is that right?

A. I talked with the manager; yes, sir.

Q. And how many stubs did you pick up there? A. (Pause) There we picked up --

42 Q. What I'm trying to say is: did anyone that was on the job have their stub on the job with them? A. Yes.

Q. Who? A. John Wills, Senior.

Q. Who else? A. (Pause) He's the only one.

Q. Now, did you take the other fellows off their job and take them to their homes to pick up their tickets? A. No, sir.

Q. How did you get them? A. They -- those that were not positive as to the exact location called their homes to determine if it was there.

Q. So -- A. Once they had determined where they were, why, we started from there to collecting them.

Q. So, when you went to Johnson (sic) you weren't looking for

Clemons; were you? You were looking for someone with a missing stub, who couldn't account for his stub; is that correct? A. I was looking for the employees to whom Mr. Bouchard had given these tickets to this particular ball game.

Q. All right. Now, who told you that he had Q 21? A. Well, the
43 seats were identified through the ball park, actually -- these six tickets, --

Q. Yes. A. -- as having been sold to Glass Distributors.

Q. Yes. A. At Glass Distributors, Mr. Bouchard said he had given all six tickets to one particular employee to hand out to the ones --

Q. Yes. A. -- who wanted to go. And they got them from that particular person, and I believe that person was Wills. I wouldn't swear to that.

Q. Now, I say, who told you that he had Q 21? A. Well, the defendant himself thought --

Q. I mean before that. If anyone -- if he had had a stub for Q 21 -- if he had a stub in his pocket, he wouldn't have been the man; isn't that correct? A. That's right.

Q. Did Butts tell you that he had two tickets? A. No.

Q. Well, his cab-driver friend doesn't work at Glass Distributors. How did he get a ticket? A. Now, you are refreshing my recollection as to how many tickets he was given the night of the ball game or how many stubs he had.

44 Q. Yes. And on the night of the ball game, didn't Wills tell you he got two? A. Yes; he got two.

Q. Where did you get that taxicab driver's ticket from?

A. This person who identifies himself as Butts or who is called Butts, I believe his name in fact is Albert Frank Dowe. He lives on Bladensburg Road, Northeast. We went to the Glass Distributors a second time. This man was out on the street, on a job, when we were there the first time and we were told that we could come back and talk to him in the proximity of four o'clock. Actually, it was later than four when he got in. Talking

to him, he knew that his ticket stub was at home. Through him we identified the cab driver, his friend.

Q. What's his name? A. Pardon me. His name is Maxwell Washington.

Q. Got his address? A. (Pause) No; I don't have it written here, but it's in the Northwest Section of the city.

Q. All right, sir. Butts told you his ticket was home. A. The stub, yes.

Q. And that's four o'clock in the afternoon. That's after you had arrested and had this man in the lineup; isn't it? A. Oh, yes.

45 Q. Now, Officer Bonaccorsy, in the course of your investigation, were you able to determine that each person -- that Butts sat in the same seat that his stub called for? A. Only through each individual's own testimony, yes.

Q. What did Wills tell you as to where he was sitting? Did he tell you he was sitting in Seat 23? A. Well, he had his stub right in his possession at the time, so - his stub stated Seat 23.

Q. Who did he tell you was sitting next to him in 24? A. Well, he wasn't sure whether there was anybody sitting there at all, in 24.

Q. In other words, he was pretty sure there wasn't anybody sitting there; isn't that right? A. I can't say he was pretty sure. He said he wasn't sure that there was anybody sitting in that seat.

Q. Well, who was sitting to his left, in 22? A. 22 would have been Mr. Cox.

Q. And who was sitting next to Cox? Did Cox tell you? A. In seat 21 --

MR. BEST: Objection.

(Addressing the witness) Just a second.

Your Honor, we have given this defense counsel much leeway here. I don't see the relevancy of who was sitting in each particular seat. The thing that is relevant is: did this defendant have this particular stub? He was holding the stub. That is the relevant part. Whether he sat in

46 the same seat or whether, when they all got there, they each took different seats, having come in together --

MR. SEWELL: Of course, it makes a difference.

MR. BEST: -- is not relevant.

MR. SEWELL: Of course, it makes a difference. There is one person who held Stub Q, Row 4, Seat 24, a seat in the grandstand, who didn't even sit in the seat.

I think that it points this out: Simply because if any one of those men who want to that game, if he couldn't account for his stub, if he didn't have his stub the next day, they would have arrested him.

This man doesn't know what seat he was in. He doesn't know what he did with any stub he had, like a lot of people who go to a ball game. It's hard to determine how a stub is lost out of a pocket, because they are the hardest thing to get out of a pocket once you put it in there. You just don't lose them like a nickel or a dime.

THE COURT: Of course, Mr. Sewell, this is a preliminary hearing. I'm not trying this case.

MR. SEWELL: I know.

THE COURT: And even though you rested, I permitted you to call this man back for one particular purpose, and that is only as to the stub.

47 MR. SEWELL: I didn't rest, your Honor. The Government might have rested, but I didn't.

THE COURT: I mean, you rested as far as cross-examining this witness is concerned and he was excused.

MR. SEWELL: Oh, yes. This morning. That's right.

THE COURT: I don't want you to rehash what you've been over. So, I sustain the objection.

MR. BEST: Thank you, your Honor.

THE COURT: Anything further about the ticket?

BY MR. SEWELL:

Q. Did somebody tell you that this man had the stub for Seat 21?

A. No. Nobody told me that.

MR. SEWELL: I have nothing else, your Honor.

THE COURT: You may step down.

(The witness left the stand.)

THE COURT: That's the Government's case?

MR. BEST: Government's case, your Honor.

THE COURT: All right. There is sufficient probable cause to hold him for action of the grand jury.

Has this man been advised of his rights? I think you were retained.

MR. SEWELL: Yes.

THE COURT: You understand that this is a felony, a rape case, and you had your preliminary hearing. You are not required to make any statements but, if you make any statements, they may be used against you. Is that clear?

(The defendant shakes his head.)

THE COURT: No bond in this case.

* * * * *

[Filed October 9, 1961]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled on August 31, 1961, Sworn in on September 5, 1961

The Grand Jury charges:

On or about August 15, 1961, within the District of Columbia, Charles Clemons had carnal knowledge of a female named Meta Waters, forcibly and against her will.

/s/ David C. Acheson
Attorney of the United States in and
for the District of Columbia

* * *

[Filed October 13, 1961]

PLEA OF DEFENDANT

On this 13th day of October, 1961, the defendant Charles Clemons, appearing in proper person and without counsel, being arraigned in open Court upon the indictment, the same being read to him, pleads not guilty thereto.

The defendant is remanded to the District Jail.

By direction of

MATTHEW F. McGUIRE
Presiding Judge
Criminal Court # Assignment

* * *

* * *

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

1 Washington, D.C.
February 19, 1962BEFORE THE HONORABLE RICHMOND B. KEECH, United States
District Judge, Trial.

* * * * *

3 (Jury sworn, opening statement of counsel reported but not transcribed.)

THE COURT: Your first witness, Mr. Caputy.

MR. CAPUTY: Meta Waters, if Your Honor please.

META WATERS
DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Now, will you speak loudly and clearly so that His Honor and the members of the Jury and the defendant and his lawyer can hear you. Speak so I can hear you back here. A. Yes.

Q. Would you give us your name? A. Meta Waters.

Q. Meta Waters? A. Yes.

Q. Where do you live? A. 1213 I, Northwest.

Q. Do you live anywhere else? A. 3805 South 9th Street, Arlington, Virginia.

4 Q. Now, do you have a business? A. Waters Employment Agency.

Q. Where is the Waters Employment Agency? Where is it located? A. 1213 I.

Q. Northwest? A. Yes.

Q. In the District of Columbia? A. Yes, sir.

Q. All right. How old are you? A. I was born March 21, 1881.

Q. 1881? A. Yes.

Q. Now, directing your attention to August 15, 1961, where had you been earlier in the evening of that day? A. I went to the National Theater to see the Music Man.

Q. And did there come a time that you left the National Theater? A. There did.

Q. What time was it that you left the National Theater? A. About 11:30.

5 Q. Where did you go, if anywhere, when you left the National Theater? A. I went to 1213 I Street, Northwest.

Q. Where is the National Theater? A. It is on Pennsylvania Avenue and 13th.

Q. Now, how far is the National Theater from your employment agency at 1213 I Street, Northwest? A. I don't know. I should judge about four or five blocks.

Q. Now, when you left this theater, where, if anywhere, did you go? A. I went straight home.

Q. And by home, what do you mean? A. 1213 I Street.

Q. About what time did you get into 1213 I Street, Northwest?

A. Between 11:30 and 12:00 o'clock.

Q. What do the premises at 1213 I Street, Northwest, consist of? What kind of quarters do you have? How many rooms? A. Well, I have two offices at the front and I got my apartment in the back.

Q. In addition to the two offices in the front? A. Yes.

6 Q. When you went to your employment agency, how did you enter the premises? A. I entered from the front door.

Q. Now, would you tell us in your own words what, if anything, did you do after you went into the premises upon leaving the National Theater on August 15, 1961? A. I went to my apartment and I got into my nightgown and then I went and got a sandwich and a glass of milk and then when I got through, I went into the little kitchenette to take my glass in there and just at that time I was attacked.

Q. Now, tell us about that. What, if anything, happened as you were taking your glass into the kitchenette? A. He attacked me and put his hands over my eyes.

Q. From the front or behind? A. From behind.

Q. Then what happened? A. Then he took me to the front in my second office and he threw me down on the -- oh, no, he took me into my apartment and threw me down on the floor. Then he asked me to get up

and walk with him and he repeated that three times, walk with him and then he took me to the second office, to the front, and he threw me down on the floor.

7 Q. Then what happened? A. Then he went and took his private and put it into mine.

Q. What, took what? A. He took his private and put it into mine.

Q. Now, was anything said by the individual when this happened? A. I couldn't see. He kept my eyes covered up and the only thing I saw was his red shirt with flowers on it.

Q. Did this person who threw you to the floor and put his private into you, did he say anything to you? A. He told me three times, he said, I am going to kill you. You know that don't you? I am going to kill you and he had a knife, about a six inch blade knife.

Q. Now, when you say that he put his privates into you, what part of you? Where? A. From the front.

Q. Where is that in relation to your body? A. In my uterus.

Q. Now, at the time he put his privates into you, what, if anything, did he do after he did that? A. He took my legs and put them on top of his shoulders.

8 Q. Then what did he do, if anything? A. That is it.

Q. Well, did he lie still or did he make any kind of movement?

A. Yes.

Q. What kind of movement? A. Well, just like having an intercourse with me.

Q. And in what way is that? A. Well, oh, boy --

Q. Did he move his body? A. Yes, up and down.

Q. Up and down. How long was this person on you? A. I should judge about five or eight minutes.

Q. Well, now, did there come a time when he got up? A. Then he got up.

Q. What, if anything, happened when he got up? A. What became of him, I don't know. How I got into the street, I don't know, if I went in my nightgown or if I went dressed, I don't remember.

Q. You don't remember? A. No. But I stopped several people in the street and told them to call the police, I had been attacked.

9 Q. Now, can you tell us whether this person who did this to you, whether he was a person of the white race or the negro race? A. He was colored. I saw his hands.

Q. Can you tell us anything about the kind of clothing that the person wore? A. Only thing that I saw was his red shirt with flowers in it and a small brim hat. That is the only thing I saw.

Q. Can you tell us whether there came a time that the police came there? Did the police come? A. When I went out into the street to get people to help me, I went to an apartment house and I talked to the switchboard operator.

Q. Did there come a time that the police came there? A. When I got back to my office, the police were there.

Q. Now, after the police came, did you tell the police what happened? A. I did tell the police and the police took me --

Q. You did? A. Yes.

10 Q. Now, can you tell us whether you were taken anywhere? A. Yes, the police took me to the General Hospital.

Q. District of Columbia General Hospital? A. Yes.

Q. And what, if anything, happened at the District of Columbia General Hospital? A. They examined me and cleaned me up.

Q. Now, examined you, what part? Down in the vagina? A. Yes.

Q. Can you tell us whether you had any marks or bruises around your face? A. Yes. He crushed my face when he got through with me and I was black and blue from my neck and my face.

Q. Now, after you had gone to the hospital, where did you go after that? Did you return home? A. No. I think they took me to the court house.

Q. Now, this that you have testified to, did that take place or happen here in the District of Columbia? A. Yes, sir.

Q. Now, what color nightgown were you wearing, do you recall?

A. I think it was kind of a print; it was an outing.

Q. Now, can you tell us whether you had given any clothing to the
11 police? Did you give the policeman any clothing? A. No.

Q. Any nightgown? A. I don't remember. I don't remember whether I gave the police anything.

Q. Can you tell us anything about the height and weight of this person who came into your place? A. I think he was about my height and maybe about a couple inches taller.

MR. SEWELL: I object to this. Does she know?

MR. CAPUTY: I don't know, Your Honor, I am asking her.

THE COURT: Can you give the approximate height of the person?

THE WITNESS: Well, he was about my height. Maybe a little taller, a couple of inches.

MR. CAPUTY: May I have this clothing marked, Your Honor, as government's exhibit No. 1 for identification?

THE COURT: Yes, sir.

(Government's Exhibit No. 1 was marked for identification.)

BY MR. CAPUTY:

12 Q. I show you what has been marked as government's exhibit No. 1 for identification and I will ask you to examine it, the clothing, and tell us whether you can identify it. A. It is mine.

Q. What is yours? A. That is my gown.

Q. Your gown what? A. My nightgown.

Q. Well, when did you wear that last? Were you wearing this on August 15? A. Yes, I had that on.

Q. You had that on? A. I had it on when he attacked me.

Q. All right. Now, what color shirt was this person who attacked you wearing? A. It was a red shirt with flowers in it.

MR. CAPUTY: May I have this shirt, Your Honor, marked as government's exhibit 2 for identification?

THE COURT: Yes.

(Government's exhibit No. 2 marked for identification.)

BY MR. CAPUTY:

13 Q. I show you what has been marked as government's exhibit No. 2 for identification and ask you to examine it and tell us whether you can identify it? A. That is the shirt.

Q. That's the shirt what? A. That's the shirt he had on when he attacked me.

Q. On what day? A. August 15.

Q. When he attacked you where? A. When he attacked me in my office.

Q. And where is that? A. 1213 I, Northwest.

Q. Were you able to see the face of this person who -- A. Yes -- no, because he kept my eyes covered up.

Q. How did he do that? A. When he had me down on the floor, he put a handkerchief over my face.

MR. CAPUTY: Would you indulge me a moment, Your Honor?

THE COURT: Yes.

BY MR. CAPUTY:

14 Q. Now, in what room was it that this happened to you? A. In the second office.

Q. Now, in the second office of 1213 -- A. From the front.

Q. Now, can you tell us whether you have any covering on the floor? A. A carpet on the floor.

Q. What kind of carpet? A. A green carpet with leaves in it.

Q. A green carpet? A. Yes.

MR. CAPUTY: Nothing further, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mrs. Waters, you didn't tell the police that this man had a knife, did you? A. Did I do what?

Q. Did you tell the police that this man had a knife? A. On that night when the police questioned --

Q. Did you tell the police? A. What?

Q. That night that the man had a knife? A. Yes.

15 Q. You told them that? A. Yes.

Q. They just failed to write it down in your statement, is that correct? Did you read the statement you gave them? A. Did I do what?

Q. Did you read the statement that you gave to the police the night of this incident? A. I gave -- well, he questioned me and I told him just what happened.

Q. And he wrote it down, didn't he? A. I don't know. I don't remember.

MR. CAPUTY: I object to counsel's question that the police failed to write it down in this statement which is contrary to it, Your Honor, and I object to that.

THE COURT: Ladies and Gentlemen, you do not get testimony from either counsel. You will get the evidence from the witness stand and not from us.

BY MR. SEWELL:

Q. Mrs. Waters, does anybody have a key to your apartment?

A. What?

Q. Does anyone have a key to your apartment? A. No.

16 Q. Now, when you got there, nobody had broken into your place, had they? A. That I don't know. He was in the building.

Q. How do you know? Did you see him? A. He attacked me. He was in the building and there is nobody in the building but me.

Q. Now, when you went in the building, you didn't see anybody?

A. No.

Q. Did you lock the door behind you? A. Yes.

Q. You are sure of that? A. Yes.

Q. And you said that whoever attacked you, must have been in there waiting for you, is that correct? A. Yes.

Q. You don't live there every night, do you? A. Yes, I do.

Q. Every night? A. Yes.

Q. Didn't you make a statement that you don't live there often but you decided to stay there this night? A. I live there most of the time.

17 Q. Is that right? A. But I have a place in Virginia, friends of mine and I can stay there any time I want to.

Q. Now, I understood you to testify a minute ago that the man crushed your face after he finished. Is that true? A. Yes.

Q. You told the police on August 15 that he knocked you down on the floor while you -- A. He did knock me down on the floor.

Q. But he hit you in the face before you were attacked, is that right? A. I don't remember.

Q. Now -- A. I know that he crushed my face and he threw me back on the floor when he got finished with me.

Q. Also you testified that you only saw the hands of the man. Didn't you say that in your testimony? A. That's right.

Q. Well, Mrs. Waters, how did you see this shirt? How are you able to identify it? A. I saw the shirt and I saw the hat.

18 Q. Now, you said your face was covered? A. Yes.

Q. Yet you identified this shirt as the shirt and you said you only saw his hands.

MR. CAPUTY: If Your Honor please --

THE COURT: I understood this was in response to a question, whether she knew he was a white man or a colored man. Is that right?

THE WITNESS: I saw his hands.

BY MR. SEWELL:

Q. What other part of him did you see? A. That's all.

Q. That's all? A. Except his shirt and hat.

Q. Well, now, when you saw his hat, was his face covered?

A. Yes, mine was covered. I could only see his hat.

Q. Well, your face was covered with what? A. With his hands most of the time.

Q. And you saw his hat through the -- A. Yes.

Q. What part of the hat did you see? A. I saw a small brimmed brown hat.

19 Q. You saw the brim but you didn't see the man's face? A. No.

Q. And you said when he held you down on the floor he still had your face covered with his hands? A. No. I think he took a handkerchief out and put it over my face.

Q. You also told the police that when -- or did you tell the police that when the man finished he went into your bathroom? A. What?

Q. Didn't you tell the police that when the man finished whatever he did do, he went to your bathroom and you ran outdoors? A. No.

Q. You didn't say that? A. No. I don't remember ever saying that because I don't remember him going to the bathroom.

Q. Where did he go? A. I don't know. He disappeared. I don't know where he went and I don't know anything about that.

Q. Did you describe the man that attacked you to the police that night? A. No, only about the shirt that he had and about the hat.

20 Q. The next day, did you see a person with a shirt and hat on like that somewhere? A. No. The next day?

Q. Yes. A. No, I don't remember. I don't think I did.

Q. Didn't you go to a line-up at the Police Department? A. Yes.

Q. Didn't you see someone with a hat and shirt on like that?

A. I don't remember that.

Q. You don't? A. No. The only thing that I have never said before, about a month or so before that time, there was a man in the line-up that looked in my window in the back.

Q. He did? A. Yes.

Q. You mean the day that this incident happened, the day you went to the line-up, there was a man in the line-up who looked in your window?

A. What?

Q. Didn't you tell the police that you had seen that man before?

A. No.

Q. You didn't? A. No.

Q. You didn't tell them that he looked in your window? A. No. This is the first time I ever said that.

Q. Well, why? A. There was a man in the line-up and he looked like the man that looked in my window when I was eating my breakfast.

Q. It wasn't this defendant? A. Yes, it was similar.

Q. He was in the line-up and you didn't point him out as the man who did that? A. No, but the man looked like him that looked in my window. I don't say that is him but a man that looked like him that looked in my window.

Q. You saw him in the line-up? A. Yes.

Q. Well, this isn't the man that you saw in the line-up but somebody that looks like him? A. I don't remember who I saw in the line-up.

22

Q. Why didn't you tell the police that you thought you -- that you remembered the man had looked in your window that day at one time? A. Oh, I never thought of that.

Q. Never thought of it? A. No.

Q. Now, did you remain in the hospital that night when they took you over there? A. What?

Q. Did you remain in the hospital? A. What?

Q. When you were taken to D.C. General Hospital, were you admitted or treated and released? A. The police took me there.

Q. Did you stay? A. No.

THE COURT: Did you spend the night there?

THE WITNESS: No.

BY MR. SEWELL:

Q. Were you present when a baseball stub was found? A. No.

Q. You were not present? A. No.

23

Q. Had you shown several officers that room before the stub was found? A. Did I do what?

Q. When the police came, Mrs. Waters, did you take them and show them the place where the attack occurred? A. Yes, I am sure I did.

Q. Did you see a baseball stub there at the time? A. No.

Q. Have you ever referred a person from your agency to Glass Distributors? A. No.

Q. You are sure of that? A. Yes.

Q. You never have? A. No. I don't deal with them.

Q. You don't? A. No.

Q. Do you know or do you have an idea how the person got into your apartment? A. No.

Q. To your building? A. No.

24 Q. Was there anything since that time that you discovered --

A. The only thing in my lavatory in the front office, there is a small window and that was open but there is heavy wire half way up and, of course, I think anybody could have gotten in there if they wanted to, you know, but that window was open.

Q. On the side of the building? A. Yes.

Q. Did you leave it open? A. Yes, it was hot summer time and I left that window open.

Q. You left the window open? A. Yes.

Q. Did the police take fingerprints off of it to your knowledge?

A. No, I don't know.

Q. This person who attacked you, didn't have any gloves on, did he? A. No.

Q. You just saw the shirt and hat. Did you see the trousers?

A. That's all I saw.

25 Q. You didn't see the trousers? A. No.

Q. Didn't you tell the police the man was wearing dark trousers?

A. No.

Q. You didn't? A. No.

Q. Could you have told them that and forgotten it? A. What?

THE COURT: You don't recall having told them that, do you?

THE WITNESS: No.

BY MR. SEWELL:

Q. Now, you say your office is right across the street from Trailways Bus Station, isn't it? A. Yes, that's right.

Q. Now, you said you ran to -- where is this apartment that you ran to? A. It's in the back of my office.

Q. Up the alley? A. It's the same floor.

Q. Towards K Street? A. Yes.

26 Q. When you ran out the front door, you were right across from the Trailways Bus Station, wasn't it open? A. Yes.

Q. A lot of people over there? A. That I don't know. There is always people coming and going.

Q. You ran up the alley? A. Yes. I went in from the front way right from I Street and went to the back of my apartment.

Q. After that attack when you came out, you came out the front, didn't you? A. Yes.

Q. And right across the street is the Trailways Bus Station, is that correct? A. Yes.

Q. This apartment faces K Street? A. That apartment? No, it faces the alley in the back. My office faces I Street and my apartment towards K.

Q. I am talking about the apartment you ran to and made a phone call? A. That is on the alley.

27 Q. Where is it? A. The alley?

Q. Does it face 12th Street or what street? A. Oh, it don't face no kind of street, only the alley.

THE COURT: Did you go out of your place into the alley or out into the street?

THE WITNESS: No.

THE COURT: Where did you go?

THE WITNESS: I went the front way. There is no other entrance and I have to go out the front way on I Street.

BY MR. SEWELL:

Q. Where is the apartment where this man worked in? A. In the back of my office on the same floor.

Q. Now, I don't think you understand. I am not talking about where your apartment is. I understood you to testify that you went into an apartment building down the street somewhere? A. Oh, yes, that is 12th and I.

MR. CAPUTY: That is not her testimony.

THE COURT: I don't understand either, Mr. Caputy.

When you went out of your building, where did you go?

THE WITNESS: Well, I went out the front way and I don't know how I was dressed, whether I went in my nightgown or how because my mind was a blank to that but I stopped people on the street.

28 THE COURT: After you got out on the street, you talked to some people?

THE WITNESS: Yes.

THE COURT: Then where did you go?

THE WITNESS: I went to that apartment house.

THE COURT: How did you get there? What route did you take?

THE WITNESS: That is right on I Street facing 13th Street, a big 12 story building and I went in on I Street and I talked to the switchboard operator.

BY MR. SEWELL:

Q. That is right on the corner of 13th and I? A. Yes.

Q. On the same side of the street that your place is on? A. Yes.

Q. Do you have anyone who cleans up your office, Mrs. Waters?

A. What?

Q. Do you have a janitor that cleans up your office? A. No.

29 Q. Who cleans up your office? A. I do.

Q. And is the bathroom right off the room where this attack occurred? A. There is no bathroom on my floor, only a lavatory.

Q. The lavatory? A. Yes.

Q. It's right off the room where this attack occurred, is that right? A. What?

THE COURT: Is it near the room where the attack occurred?

THE WITNESS: No, the lavatory is in the front office.

MR. SEWELL: No further questions.

MR. CAPUTY: Nothing further.

THE COURT: You may step down. Watch the step, please.

RALPH CABELL

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

30

BY MR. CAPUTY:

Q. Would you state your name, sir? A. Ralph Cabell.

Q. What is your business or occupation? A. I am night PBX operator at 1228 I Street, Northwest.

Q. Here in the District of Columbia? A. Yes, sir.

Q. Now, directing your attention to August 15, 1961, were you working that day? A. I went to work that night at ten o'clock.

Q. After you had gone to work, can you tell us, sir, whether a woman came into your apartment building? A. Yes, she did.

Q. And did you make any telephone call? A. She asked --

MR. SEWELL: He is practically leading the witness.

MR. CAPUTY: All right, Your Honor.

BY MR. CAPUTY:

Q. Now, do you see her in the court room, the person that came to that apartment building? A. Yes, I do.

Q. Would you point her out? A. The lady before me.

Q. The one here? A. Yes.

MR. CAPUTY: May the record show, Your Honor, the witness has identified the complaining witness, Meta Waters?

THE COURT: Yes, sir.

31

BY MR. CAPUTY:

Q. Now, directing your attention to August 15, 1961, did you have occasion to see this person whom you have identified as Meta Waters?

A. Yes, I did.

Q. About what time was it that you saw her? A. Well, I can't tell approximately what time it was.

Q. Where did you see her? A. She came in the lobby and asked me to call the police for her.

Q. Did you call the police? A. Yes, I did.

Q. How was she dressed, this lady dressed at the time she came into the apartment building? A. She was dressed in a nightgown.

Q. And did you have an opportunity to observe her face? A. Well, her face was bruised.

Q. Bruised? A. Yes.

Q. Did you call the police? A. Yes, I did.

MR. CAPUTY: Nothing further, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Cabbell, when did you come forward in this case? A. Well --

Q. Just answer the question, when? A. I don't know directly the date when I first got the summons to appear here in court.

Q. But you didn't tell the police on the night of August 15, did you?

A. The police didn't ask me.

Q. When did you tell them exactly? A. Well, I am just telling it now.

Q. This is the first time you told it to anybody? A. Yes.

Q. When did you get a subpoena the first time? A. I am not sure of the date. Oh, it was about last month some time.

Q. So your name was added to the witness list last month? A. Yes.

Q. Who did you tell that you knew this woman? A. I didn't tell anyone. I called the police and gave my name then.

Q. Did they come down and see you that night? A. They came back and got my name.

Q. When? A. That was -- that was some time last month.

Q. I see. In other words, from August 15, the police didn't say anything to you and you didn't say anything to the police until January, 1962, isn't that right? A. That's right.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. At the time you saw the police, that was some time last month?

A. Yes.

Q. Is that what you say, sir? A. As far as I can remember.

Q. Were you asked to contact any Assistant United States Attorney?

A. I was asked to see attorney Caputy.

Q. Caputy? A. Yes.

Q. And that is the first time you were called into this case, is that correct, sir? A. Yes.

Q. You were asked to see me or contact me? A. Yes.

MR. CAPUTY: That is all.

MR. SEWELL: Nothing else.

THE COURT: You may step down.

MR. CAPUTY: Might I take a witness out of turn?

MR. SEWELL: No objection.

THE COURT: All right, sir.

ROBERT L. BOUCHARD

was called as a witness on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name and occupation, sir? A. My name is Robert Bouchard. I am president of Glass Distributors, Incorporated.

Q. Where is that located, sir? A. 1741 Johnson Avenue, North-west.

Q. Do you know a person named Charles Clemons? A. Yes.

Q. Do you see him here in the court room? A. Yes, the defendant.

Q. Would you point him out, please? A. Yes.

MR. CAPUTY: May the record show, Your Honor, the witness has identified the defendant?

THE COURT: Yes.

BY MR. CAPUTY:

Q. Now, can you tell us, sir, how you know him? Where he is employed, correct? A. He was an employee of mine.

Q. Now, sir, can you tell us whether you go to the ball game?

A. Yes.

Q. Do you go by season ticket or do you go by individual ticket?

A. Usually a ticket on the season plan.

Q. Do you have a season plan? A. Yes.

Q. Did you have a season plan for ball games for August of 1961?

A. Yes, I did.

Q. And what kind of plan was it that you had? A. Plan four for 18 night games.

Q. 18 night games? A. Yes.

Q. Now, can you tell us, sir, whether the plan that you had called for a game on August 15, 1961? A. Yes, it did.

Q. Did it? A. Yes.

Q. Now, do you recall how many seats you had in this plan?

MR. SEWELL: Your Honor, I see he is referring to some record or something.

THE COURT: Is this your own record?

THE WITNESS: Yes, this is the card I got when I got my season tickets and I circled the games which we attend or had seats for.

BY MR. CAPUTY:

Q. How many seats did you have? A. Six.

Q. Do you recall where and in what section of the ball park?

A. Section "Q", lower, Row 4, Seats 19 through 24.

Q. Now, can you tell us, sir, what, if anything, happened to the tickets for August 15, 1961? A. I gave them to my employees for their use.

Q. Your employees? A. Yes.

Q. Now, do you know a person named Willis, sir, John Willis?

A. James Willis.

Q. Is that senior or junior? A. Senior.

Q. Does he work there, sir? A. Yes, sir.

Q. Do you know a person by the name of Arthur Cox? A. Yes.

Q. Does he work at your place? A. He is my employee.

Q. Do you know a person by the name of Albert Dowe? A. Yes.

Q. Where does he work? A. He works for Miles Glass Company but out of my building. They are tenants.

38

Q. How about a person by the name of Maxwell Washington?

A. I do not know him.

Q. Do you know a person by the name of Elmer Jackson?

A. No, sir.

Q. Now, what did you do with the tickets you had for this night?

A. I would say about four o'clock in the afternoon, I gave them to my foreman and advised him that the employees could use them.

MR. CAPUTY: May I have this envelope and contents marked as government exhibit 3 for identification?

(Government's exhibit No. 3 marked for identification.)

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as government's exhibit 3 for identification. Would you examine the contents and tell us whether you can identify the contents of government exhibit 3 for identification?

A. These are the tickets which I gave to my foreman.

Q. When was that? A. August 15, approximately four o'clock in the afternoon.

39 Q. 1961? A. Yes.

MR. CAPUTY: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Bouchard, you don't know what the foreman did with the tickets? A. Yes.

Q. What did he do with them? A. He gave them to other employees and he was unable to attend himself.

Q. Well, you don't know what he did with them now? A. That is true.

Q. He gave them to other people other than your employees? A. I think he gave them to the employees and they passed them on to others.

Q. Well, how do you get your employees, sir? Do you get them through an employment agency? A. Normally. Some times through personal contact with an employee and a friend.

40 Q. Have you ever hired an employee through the Waters Employment Agency? A. No, sir.

Q. Or had them sent there by the Waters Employment Agency? A. Not to my knowledge.

Q. Do you have a person working for you named Miller? A. No, sir.

Q. You don't? A. No.

(Mr. Sewell conferring with the defendant in this case.)

THE WITNESS: Could I volunteer some information?

MR. SEWELL: Yes, sir.

THE WITNESS: We did have an employee Edward Miller who has retired and is now drawing social security and I believe he was employed at that time.

BY MR. SEWELL:

Q. You didn't have a Miller working for you in August, 1961, about 19 or 20 years old? A. We have an employee who I understand has changed his name legally to Dan Junior Murphy who was known and employed under the name of Miller, Dan Miller.

41 Q. That is the one I am talking about. Does he still work for you? A. Yes.

Q. How did he come to be hired?

MR. CAPUTY: What was that?

BY MR. SEWELL:

Q. How did he come to be hired by you?

THE COURT: I will sustain the objection to that, sir. Was he hired through the Waters Employment Agency?

THE WITNESS: No, sir.

BY MR. SEWELL:

Q. Since you know he wasn't hired through the Waters Employment Agency, could you tell us what employment agency he was hired through? A. Yes, occasionally we need to hire help from the U.S. Employment Agency Service to unload trailers and if I recall, it was on one of these occasions that he came to work and he worked rather well and so we put -- took him on and put him on as a permanent employee.

Q. He was named Miller and he legally changed his name?

A. Yes. I am not certain of the legal involvement in this case but his social security card was changed or name changed on the social security card.

42

Q. He still works for you? A. Yes.

MR. SEWELL: Thank you.

MR. CAPUTY: I have nothing further.

THE COURT: All right, sir, you may step down.

MR. CAPUTY: I have another witness, if I might call him.

JOHN L. WILAJ

was called as a witness on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name? A. John L. Wilaj.

Q. What is your business or occupation? A. Right now at the present time I am with -- employed with the Washington Senators, advertising and promotion department.

Q. Now, what was your employment, sir, in the summer of 1961?

A. Tickets and promotion.

43 Q. What did that consist of, sir? A. Well, it consists of soliciting customers on different various season plans at the ball park plus making speeches and public relations work.

Q. Do you know a person named Robert L. Bouchard, sir of the Glass Distributors, Inc.? A. I do.

Q. Can you tell us, sir, whether Mr. Bouchard of the Glass Distributing Company subscribed to any season plan at the ball park?

A. He did.

Q. What kind of plan was it? A. We call it a plan four for our own identification at the ball park.

Q. Now, do you recall -- can you tell us, sir, whether this plan called for any tickets for August 15, 1961? A. I believe so. August 15 was a date in that plan.

Q. Do you have any records, sir, concerning that? A. Yes, I do. They are in my briefcase. May I get that?

THE COURT: Yes, sir.

BY MR. CAPUTY:

44 Q. Are those records kept in the regular course of business at

the ball park at that time, sir? A. They are.

Q. All right. A. There are several copies that I have here.

Q. Did the plan of Mr. Bouchard call for any tickets for August 15, 1961? A. Yes, sir.

Q. And how many tickets? A. I think it is six, sir.

Q. Do you recall where? A. Lower section "Q", row four, 19 through 24.

Q. 19 through 24, what does that mean? A. Seat numbers.

Q. I ask you, sir, and show you government exhibit No. 3 for identification and I ask you to examine the contents of it and tell us whether you can identify the contents of government's exhibit No. 3?

A. These are the tickets that we sell to season customers.

Q. To whom were they sold, the contents of government exhibit 3?

A. Glass Distributors, Mr. Bouchard.

Q. And would you check them and tell us what section and what

45 seat numbers they are, sir? A. Lower "Q", row four, 19 through
24.

MR. CAPUTY: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Do you keep records at the ball park as to the time the game took to play? A. There are records for the -- the American League records, the umpires files but we don't. We start at 8:05 and when it is finished, the umpire submits a report to the American League.

Q. Well, does the club keep a copy of that? A. I couldn't be sure, sir. They probably would in the Ticket Department. I am pretty sure Mr. Morsey would have it who is in charge of tickets.

Q. Would the time as outlined in the box score that you read, is that official? A. It should be, sir.

MR. SEWELL: That is all.

THE COURT: You are excused, sir.

We will recess at this time, Ladies and Gentlemen, to return at 1:45 with the same admonition heretofore given you.

(Whereupon, at 12:32 p.m. court recessed to reconvene at 1:45 p.m. the same day.)

46

Afternoon Session
1:45 p.m.

MR. SEWELL: May I recall Mrs. Waters for one question, please?

THE COURT: Yes, sir. Mrs. Waters, come around, please.

META WATERS

was called to the stand, previously sworn, was examined further as follows:

RECORD EXAMINATION

BY MR. SEWELL:

Q. Mrs. Waters, I show you what has been marked government's exhibit No. 2 for identification. A. Yes.

Q. A shirt which you identified as the shirt? A. Yes.

Q. How do you identify the shirt? Did you tear it or did you mark it or did you put -- A. No.

Q. How do you identify that as the shirt? A. Only by red and the flowers.

Q. You have never seen another shirt like it? A. If I did, I don't remember.

MR. SEWELL: That is all I have.

THE COURT: All right, you may step down.

ROBERT BLEASDELL

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name and your profession? A. Robert Bleas dell, Intern at D.C. General Hospital.

Q. And how long have you been an intern at the District of Columbia General Hospital? A. Since the first of July.

Q. Where did you get your medical experience? A. University of Ohio State.

Q. Now, directing your attention to August 15, 1961, were you working at the District of Columbia General Hospital? A. I was intern on duty in the emergency room.

Q. What time were you intern on duty in the emergency room of the D.C. General Hospital? A. From ten p.m. to 8 a.m. of the 16th.

Q. Do you today, sir, know a person named Meta Waters?

A. Yes, I do.

Q. Do you see her in the court room? A. Yes, the lady there with the white hat and the maroon dress.

Q. Is that the lady? A. Yes.

MR. CAPUTY: May the record show, Your Honor, that he has identified the complaining witness?

THE COURT: Yes, sir.

BY MR. CAPUTY:

Q. Now, Doctor, directing your attention to your time of duty on the 15th of August, 1961, and August 16, 1961, did you have occasion to see that lady come in whom you just identified? A. Yes, I was called to see her regarding a rape case.

Q. Do you recall what time you saw her? A. I believe it was around two o'clock, quarter of two in the morning.

Q. That would be August 16? A. Yes.

Q. Now, did you have an opportunity to observe her face? A. Yes.

Q. And her body? A. Yes. When I was called to see her, she was on the examining table in one of the rooms with a matron and a nurse there and she appeared very -- a little nervous but not too nervous. She was fairly alert, I think. She looked a little disheveled, face bruised, a large bruise over the left side of her face, on the left jaw and left forearm and hand also bruised.

Q. Could you tell us, sir, whether you performed or conducted a vaginal examination of Mrs. Waters, this person whom you just identified? A. Yes, I did a brief general physical examination and I did a pelvic examination of her.

Q. Now, would you tell us just how you conducted that pelvic examination? A. The pelvic examination is done by first inspecting the clitoris in the area of the external genitalia and no bruises noted externally. We then used an instrument to see the vagina and cervix and the vaginal walls were bleeding in several spots and appeared to be bruised and there were small areas of punctate hemorrhages, bleeding slightly. The cervix was not visualized in the upper most part of the

vagina as the vagina was agglutinated about -- by four to five inches.

Q. What do you mean by that? A. The upper most part of the
50 vagina was closed down. We were not able to see the upper part
of the vagina.

Q. Did you take any smears? A. We took two smears with a
little wooden applicator with cotton on the tip.

Q. When you took those smears with the cotton applicator, what
did you do with them? Did you place them anywhere? A. Yes. The
nurse had the two glass slides with the patient's name and date and
handed them to me. I smeared each slide and put them in a little glass
container with a solution on them and the patient's name on this glass
container and put them in there, tightened the lid and took the pathology
sheet and wrapped it around it and sent it by an aid over to the pathology
lab.

MR. CAPUTY: May I have these slides marked as government
exhibit four, two of them?

THE COURT: Yes, sir.

(Government's exhibit No. 4 was
marked for identification.)

BY MR. CAPUTY:

Q. Now, can you tell me, sir, whether those slides are designated
as the ones where you took the smears from the cervix and the one where
you took the smear from the urethra? A. Yes, one has a "U" and one
51 has a "C" on it.

Q. I show you what has been marked as government's exhibit
No. 4 for identification and ask you to examine it and tell us whether
you can identify them. A. These two slides would be -- both marked
Meta Waters, my initials and the date.

Q. Did you send them to the lab, sir? A. Yes. I put them in
the bottle and the bottle was sent to the lab.

MR. CAPUTY: I have nothing further, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Now, what else did you do to her, Mrs. Waters, sir, beside take the smears? A. Well, I listened to her blood pressure, listened to her heart and examined her face and her left arm.

Q. And did you find out her age? A. 80 years old.

Q. Now, did you recommend hospitalization? A. No, I didn't.

Q. It wasn't needed? A. I didn't think it was needed at that time, no.

52 Q. Now, in your examination of her and talking with her, did you find out the last time that she had an intercourse? A. No, I didn't ask her that. I didn't ask her if she was raped but the nurse and the matron said she had been raped. I did not ask her myself.

Q. Now, I am talking about prior to this rape charge; did you ask her about intercourse? A. No, I did not, sir.

Q. Did the examination reveal to you that it was a person who had not had sexual intercourse in many years or months? A. It appeared that -- one would expect in an elderly lady that the vagina would be -- not be patent. In her case the vagina was open and there were several bleeding areas on the vaginal wall.

Q. Did you -- excuse me. A. This didn't look -- the only other thing you could confuse this with would be senile vaginitis which didn't look like that at all.

Q. Did you make an examination to determine whether it was? A. Well, I can just by observation or by looking.

53 Q. You determined it by looking? A. Yes, and it didn't look at all like senile vaginitis.

Q. Did any doctor on the staff confirm your opinion? A. No one else saw her except me.

Q. Of course, a person that age being raped, in your opinion, would it require hospitalization in most cases?

THE COURT: I will sustain the objection to that.

MR. SEWELL: I have nothing else.

THE COURT: You said you didn't think it was necessary for her to be hospitalized, is that correct?

THE WITNESS: No, I didn't think so at all.

THE COURT: All right, Doctor, you may step down.

DANIEL WEISS

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name, sir, and your profession?

A. Daniel Weiss, I am a physician.

Q. Have you any speciality, Doctor? A. I am a pathologist.

Q. Where are you a pathologist, sir? A. I am director of the 54 department of Pathology and Laboratory Medicine at the District of Columbia General Hospital.

Q. And how long, sir? A. Since 1953.

Q. Now, as a pathologist, sir, what do you do, Doctor? A. I examine specimens from patients, both tissues and fluids for various determinations necessary for medical care.

Q. Can you tell us whether among your duties whether you examine slides to determine the absence or presence of spermatozoa?

A. I do.

Q. Can you tell us how many you have examined during the period that you have been at the hospital? A. Many hundreds.

Q. Have you testified in court previously concerning the absence or presence of spermatozoa? A. Yes, I have.

Q. Now, where did you get your training, Doctor? A. I graduated from Columbia University in 1946 and I trained in New York City at several hospitals in pathology and in medicine.

55 Q. I show you, Doctor, what has been marked for identification as government's exhibit No. 4 and -- I submit, Your Honor, this witness is qualified.

THE COURT: Do you have any preliminary questions?

MR. SEWELL: No. I agree to his qualifications.

BY MR. CAPUTY:

Q. I show you government's exhibit No. 4 for identification and ask you to examine them and tell us whether you can identify them.

A. Yes, I can.

Q. How do you identify them? A. These are the slides marked with a name and the initials of a physician, and also by a number which was put on the slide by our laboratories prior to its examination.

Q. Now, when was it that you first saw government's exhibit No. 4 for identification, those two slides, sir? A. On the 16th of August.

Q. And where? A. In my office.

Q. And where were the two slides when you first saw them at your office on the 16th of August, sir? A. The two slides were contained in a specimen bottle, in fluid.

56 Q. Did the specimen bottle that contained those two slides have any name on it? A. It did.

Q. What was the name? A. The name of Meta Waters.

Q. Now, did you perform any examination of the two slides that you have before you, government exhibit No. 4? A. I did.

Q. To determine the absence or presence of spermatozoa?

A. Yes.

Q. What kind of an examination did you conduct, sir? A. This is a microscopic study of the material on the slides.

Q. Would you tell us how you conducted it? A. The material is placed in the -- a stain or dye so that the material that is on the slides can be visualized more readily and then it is placed under a microscope and studied and attempts are made to identify the material which is seen under the microscope, whether they be sperm or bacteria or whatever.

Q. Now, those two slides that you have before you, sir, are they

designated of particular areas? A. They are.

57 Q. What areas? A. One is designated from the urethra, the end of the urinary track and one is designated as from the cervix which is the reproductive tract.

Q. Now, did you find any spermatozoa on either one of the two slides? A. Yes.

Q. Which one? A. In the cervical specimen.

Q. One or more? A. Several.

Q. Can you tell us whether there are spermatozoa with tails and spermatozoa not with tails and if so what is the difference? A. In order to identify sperm adequately, they have to be identified as a complete organism. In other words, a head and a tail which is the way they are normally produced. One cannot make a satisfactory identification in the absence of tails. In other words, when the sperm may have been partially destroyed and in this case there are sperms with tails present.

Q. And where has government exhibit No. 4 for identification been since that time? A. In my possession.

58 Q. And are they in substantially the same condition today as they were at the time that you had seen them on August 16, 1961? A. Yes.

MR. CAPUTY: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Doctor, you said the slides had been in your possession. What do you mean? A. They have been locked in a safe in my files in my office.

Q. Does anybody have access to that file? A. Yes.

Q. Who? A. My technician.

MR. SEWELL: I have no further questions.

MR. CAPUTY: At this time I offer government's exhibit No. 4.

THE COURT: If there be no objection, it will be received.

MR. SEWELL: No objection.

THE COURT: Doctor, you are excused.

JAMES RICHARD WILLS

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. State your name and occupation. A. James Richard Wills, foreman Glass Distributors.

Q. Foreman where? A. Glass Distributors.

Q. Where is the Glass Distributors Company located? A. 1741 Johnson Avenue.

Q. Do you know the defendant in this case, Charles Clemons, sir? A. Yes, I do.

Q. Do you see him here in the court room? A. Yes.

Q. Point him out. A. There.

MR. CAPUTY: May the record show that this witness has identified the defendant?

60 THE COURT: Yes, sir.

BY MR. CAPUTY:

Q. Now, do you know where the defendant Charles Clemons worked in August, 1961? A. Yes, he worked with me.

Q. Now, directing your attention, sir, to August 15, 1961, did you go to a ball game? A. Yes, we did.

Q. And how did you get to go to the ball game? Where did you get the tickets? A. The manager gave us the tickets, Mr. Bouchard and he gave the tickets to my son.

Q. How many tickets did you get, sir? A. Well, I had five tickets.

Q. You had five tickets? A. Yes.

Q. Do you know whether your son had a ticket? A. Well, he gave them to me.

Q. How many did he give you? A. Five tickets to give to the boys.

Q. Now, did you give anybody the tickets that he gave you?

A. Yes, I gave Charles two and Dowe's two and I kept one.

61 Q. You gave the defendant Clemons two? A. Yes.

Q. Did you go to the game? A. Yes, I did.

Q. Now, do you recall what seat you sat in at the game? A. I sat next to Clem but I think it was -- it should have been 23 but it wasn't 23.

Q. What seat did you sit in? A. I sat in -- I sit in a -- right next to Clem.

THE COURT: Who is Clem?

THE WITNESS: That is the defendant.

BY MR. CAPUTY:

Q. Do you know what seat he sat in? A. He sat next to me on my right.

Q. What number? A. The seats -- we didn't sit in the right seats because we had the right tickets but we weren't in the right seats.

Q. What ticket did you have? A. I had 23.

Q. Where did you sit? A. Next to Clem.

Q. You had ticket for 23, what seat did you sit in? A. I must have sat in 22.

Q. All right. Did you sit in 22? A. Yes.

Q. Now, what seat did the defendant sit in? A. He had to sit in 21.

Q. Think back to that night, what seat did he sit in? A. Well, he sat on my right and he had to sit in 21 because I was sitting in 22 and I should have been sitting in 23.

Q. But you sat in 22? A. Yes.

Q. Where did he sit? A. He was sitting next to me and it had to be 21.

Q. Do you recall how the defendant Clemons was dressed, what kind of shirt he had on on August 15, 1961? A. He had on a kind of reddish shirt.

Q. I show you what has been marked as government's exhibit No. 2 for identification, a shirt, and I ask you to examine it and tell us

whether you can identify it? A. That looks something like the shirt.

Q. Like the shirt what, sir? A. That he wore.

63 Q. When? A. When we was at the ball game.

Q. Now, who else was at the ball game in addition to you and the defendant Clemons? A. Well, it was Arthur Cox and Dowe and another fellow. I don't know his name.

Q. Do you know a person by the name of Dowe? A. Dowe was there.

Q. Do you know a person by the name of Maxwell Washington? A. I seen him that night.

Q. Was he there? A. Yes, he was.

Q. Do you recall what seat Maxwell Washington sat in? A. He sat on the other side of Dowe.

Q. Do you recall what seat Dowe was in? A. Dowe was -- I think he was in 20.

Q. And where was Maxwell Washington sitting? A. He was on the other side of Dowe, it would be 19.

Q. Do you recall the numbers of the tickets that you were given by your son? A. Well, I had five but I couldn't recall which five it was.

Q. You can't recall which five? A. No, sir.

64 Q. Would you look at government's exhibit No. 3 for identification, those tickets and tell us whether they look like the tickets that you were given by your son for the ball game? A. Yes, they were.

Q. They do? A. Yes.

Q. Now, did there come a time, sir, that the ball game ended? A. Yes, sir.

Q. About what time? A. Oh, it was after 11:00 o'clock.

Q. After 11? A. I think it was a little after 11.

Q. Now, when you left the ball game, did you leave alone or was -- were you with anyone else? A. Well, I went with Arthur Cox and I left him outside waiting for the other boys to come out.

Q. After the ball game was over, can you tell us whether you

saw the defendant Clemons? A. He was in his seat when the ball game was over.

65 Q. Was he there to the end of the game? A. Yes.

Q. Did you see him leave the stadium? A. No, I didn't see him leave the stadium. You see, I got up after the ball game was over in the last half.

Q. In addition, sir, to that red shirt, can you tell us whether the defendant was wearing a hat? A. He had a straw hat on.

Q. What color straw hat? A. I think it was gray if I am not mistaken.

Q. Do you know what color trousers he was wearing? A. No, I don't.

MR. CAPUTY: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Wills, is that your name? A. Yes, sir.

Q. You say your son gave you five tickets? A. Yes, sir.

Q. Could you tell us what happened to the 6th ticket? A. The sixth ticket, he gave that to Arthur Cox personally.

Q. How do you know that? A. I was right there when he gave it to him.

Q. You were standing there when he gave it to him? A. Yes.

Q. Now, you say you kept one ticket and you gave Charles Clemons two tickets. Who did you give the other two to? A. Albert Dowe.

Q. Is that the fellow they call Butts? A. Yes.

Q. What did Butts do with his other ticket? A. He gave it to this other boy he brought to the ball game.

Q. What was the other boy like? A. Kind of tall, husky.

Q. A cab driver? A. Yes.

Q. What did Charles do with his second ticket? A. Supposed to give it to his father. That is all I know about it.

Q. Did you see his father at the game? A. No, I didn't see his father.

Q. Why didn't you sit in the seat your ticket called for? A. We never do sit in the right seats.

67 Q. Why? A. Because see there were me and Cox, Arthur, Clem, Dowe and this other boy and they was in the seats when we got there.

Q. In their seats? A. Yes.

Q. Well, now you said you were supposed to sit in 23. Who was sitting in 23? You said you sat next to Clemons? A. That's right.

Q. And you said Dowe sat on the other side of Clemons which must be 20 and the other fellow sat on the other side of him which must have been 19. Who was in seat 23? A. 23, Arthur Cox.

Q. So Arthur Cox was sitting to you -- A. On my left.

Q. And Charles was seated on your -- A. On my right.

Q. That put you in 22. Who was in 24? A. Nobody in 24.

Q. You are sure of that? A. 24 was empty, the seat on the end.

68 Q. You are sure it wasn't 19? A. No. It runs from the post back and it had to be 24 on the end.

Q. Now, did you have some whiskey that was brought to the game?

MR. CAPUTY: He is assuming something that is not in evidence, Your Honor.

MR. SEWELL: I will ask him.

BY MR. SEWELL:

Q. Was some whiskey purchased by the people sitting there in those seats? A. It was some whiskey that was brought with them.

Q. Did you drink some of it? A. Yes, I did.

Q. And during the game, did anyone get up from their seats and leave and go out to the restroom or anywhere during the game? A. Well, they went to the restroom.

Q. Who went? A. Let's see. Cox went once I believe and I went once or twice and Dowe went once or twice and I believe Clem went once or twice.

Q. What did you do with your stub when you went in the ball game?

69 A. Well, I had mine in my pocket.

Q. Which pocket? A. I don't know which pocket. I know when

the officer come to work --

Q. I have not got to that yet. Did you wear the same clothes to work that you wore to the ball game? A. No.

Q. And you changed clothes and you took that stub out of your pocket and put it away? Do you save them or something? A. No. It is good to have it at the time.

Q. You had it on the job with you? A. Yes.

Q. Where do you live? A. I live at 831 Allison Street, Northwest.

Q. Where does Cox live? A. Cox's lives on Euclid Street.

Q. Up your way? A. Yes.

Q. Did you drive your car to the game? A. Yes.

Q. Did you take Cox home? A. No, I didn't take Cox home.

70 Q. Well, did you hear any conversation between Dowe and Clemons and the cab driver about the cab driver dropping them off in northeast?

A. No, sir.

Q. But you were not going to drop them out there, were you?

A. No.

Q. Are you sure you didn't come out of the ball park with the rest of the fellows? A. I came out with Arthur Cox.

Q. And what did you do when you got out? A. Well, we stood outside because he was waiting for Dowe and I left him standing there. I went to H Street and got my car and went home.

Q. What entrance did you come out? A. I came out of the one that -- that street -- I forgot the name of it.

Q. You came out of the entrance next to the filling station? A. Yes.

Q. You didn't go in the main entrance? A. No, I didn't come out of the main entrance.

Q. So when you left the park to get your car, the only person you saw was Cox? A. That's right.

71 Q. What time did you say the game was over? A. Something to 11.

Q. What were you wearing that night? A. I had a gabardine shirt on.

Q. What color? A. Maroon.

Q. Maroon? A. Yes.

Q. That is red, isn't it? A. Not red, no.

Q. I mean near red. A. It is maroon I call it.

Q. What kind of trousers did you have on? A. I had a pair of light trousers on.

Q. Now, Cox was sitting next to you. How was he dressed?

A. I can't recall how he was dressed.

Q. How was Butts dressed? A. I couldn't recall Butts.

Q. Why did you remember so well what Clemons wore? A. Because I sat right next to him.

Q. You sat next to Cox? A. Well, I wasn't thinking about Cox
72 at the time. I wasn't looking at nobody's clothes to see what they had on but I just -- I seen his shirt is all. He didn't ask me what kind of clothes Cox had on because I didn't remember.

Q. Who didn't ask you? A. Officers didn't ask me when they came up to the shop after me.

Q. When was this? A. I couldn't recall the day, next day after whatever happened, the 16th; we were at work.

Q. Do you know a fellow at work named Miller? A. Miller?

Q. Yes. A. Edward Miller?

Q. Yes, a young man, 19 or 20 years old. His name is Murphy now? A. Yes.

Q. How long has he been working there? A. Well, Miller has been there now about five or six months.

Q. He was there in August, wasn't he? A. No, he wasn't there when we went to the ball game.

73 Q. Are you sure? A. Quite sure.

Q. When did he start working there? A. He started working there -- I think it was July.

Q. This happened in August. A. He wasn't there at the time of the --

Q. How can you be so sure? A. I am not too sure now but I am

trying to think back because he was liable to have been there -- could have been there but we didn't offer him no tickets because the tickets we get, most of us generally go to.

Q. I didn't ask you about the tickets. You have seven people that work up there and you only had 6 tickets.

Did you hear a conversation that Miller had with your son and some of the other fellows out there about this case on the 16th? A. I can't recall that, no.

Q. Where does your son live? A. Third Street, Northeast.

Q. Is he here as a witness? A. No, he is not a witness.

Q. What is his exact address? A. 1003 3d Street, Northeast.

74 Q. Did you tell Angelo Bonaccorsey this game was over at a quarter of 11? A. I said around 11 or after 11.

Q. Did -- A. In fact, I don't know what the exact time was, but at the time the game was over we left.

Q. Were you present when the officers came to pick up the tickets from other fellows who worked out there? A. Yes, I was.

Q. Who all had their tickets there, ticket stubs? A. Well, it wasn't nobody in but me and Cox.

Q. Cox had his? A. Yes, Cox didn't have it right then. I think he went to his house and picked it up but I had mine on me.

Q. Did you go directly home when you left the ball game? A. Yes, I did.

Q. You didn't go down on I Street? A. I didn't go no where.

Q. Did you have a conversation with Clemons at the ball game?

A. Yes, we always talk.

75 Q. Do you remember anything about the conversation? A. All I asked him was where is his father and he had not showed yet.

Q. And you were to sit in seat 23 because his father was going to sit in seat 24 because you and his step father are friends, aren't you?

A. That's right.

Q. And didn't you reserve seat 24 for his step father and you sat in 23 so you could be next to him. Isn't that a fact? A. No. We never

sit that way. Just like I told you, they was there and I went in and sat down and Cox came in.

Q. Did Clemons tell you his step father was coming to the game?

A. Yes.

Q. Isn't that the reason you didn't sit in the seat that your ticket called for because you wanted to sit next to his step father? A. No, we sit next to each other. We didn't save any seat unless there was a seat on the end. We go to the ball game all the time and we always sit next to each other.

Q. I want to know what happened that night. A. This night that's how we sat.

76 Q. That night. A. We all sat together.

Q. Didn't Clemons tell you that his step father was coming and so you sit in 23 and he will sit in 24? A. We didn't mention no numbers, what seat he was going to sit in. He was supposed to come, see.

Q. Did you turn over to the officer stub 23? A. Yes.

MR. SEWELL: I have no further questions.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. You turned over 23 but you sat in what seat? A. 22.

MR. CAPUTY: That is all.

THE COURT: All right, sir, you may step down.

ARTHUR COX

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name and occupation, sir? A. My name is Arthur Cox, Jr.

77 Q. Where do you work? A. Glass Distributors.

Q. Were you working for Glass Distributors in August of 1961?

A. Yes, I was.

Q. Do you know Charles Clemons? A. Yes.

Q. Do you see him here in the court room? A. Yes.

Q. Point him out. A. Right over there.

Q. Which one? A. There.

Q. How is he dressed? A. Oh, the one with the shirt.

MR. CAPUTY: All right. May the record show that he has identified the defendant?

THE COURT: Yes.

BY MR. CAPUTY:

Q. Now, directing your attention to August 15, 1961, can you tell us, sir, whether you had gone to a ball game? A. Yes, sir, we did.

78 Q. Did you go to the game? A. I did.

Q. Did you go alone or with someone else? A. We met -- I went alone and I met at the game.

Q. Who did you meet at the game? A. I met Wills at the game.

Q. Where did you get the ticket? A. I got mine from Wills.

Q. Wills? A. Yes.

MR. SEWELL: Since there are two Wills, which one?

THE WITNESS: Senior Wills.

BY MR. CAPUTY:

Q. Where did you sit? First, what seat Number did you have?

A. 22.

Q. Where did you sit? A. Well, we was sitting wrong.

Q. Where did you sit? A. I was sitting in the second seat from the end.

Q. You had a ticket for 22? A. Right.

79 Q. Did you sit in seat 22? A. No, I did not.

Q. What number did you sit in? A. I can't recall what number seat, either 23 or --

Q. Well, who sat in 22? A. Oh, I think Senior was in it.

Q. 22? A. Yes.

Q. Where did you sit? A. I was in 23.

Q. You sat in 23? A. Yes.

Q. Now, did you see the defendant at the game? A. Yes.

Q. What seat was he sitting in? A. I don't recall. I didn't see his ticket number. I don't know.

Q. Well, who sat next to you? Did anyone sit to the other side of you? A. No, they did not. It was one seat vacant on my left.

Q. Do you know a Mr. Maxwell Washington? A. No, I don't know him.

80 Q. Do you know a person by the name of Dowe? A. Yes, I know him.

Q. Was he at the game? A. Yes.

Q. What seat was he in? A. I don't know what seat but he was on the other side of my right.

Q. On your right? A. To my right.

Q. You don't know what seat he was seated in? A. I don't know the number of the seat but he was sitting on my right, too.

Q. He was seated on your right? A. Yes.

Q. Are the small numbers or the larger numbers on your right? A. Oh, I think it was -- runs smaller down.

Q. To your right? A. Yes.

Q. Now, can you tell me how Clemons was dressed on this day? What kind of shirt did he have on? A. A sport shirt.

81 Q. What color? A. It was kind of red and dotted.

Q. I show you government's exhibit No. 2 for identification, this shirt and will you examine it and tell us whether you can identify it?

A. I wouldn't say but he had a shirt but I couldn't say it was that shirt.

Q. Does it look like the shirt Clemons was wearing on August 15, 1961? A. I wouldn't say.

Q. What? A. I wouldn't say.

Q. Does it look like it? A. Yes. He had a red shirt on but as far as that being it, I wouldn't say.

Q. Did you give a description of the shirt that the defendant Clemons was wearing on that night at the ball game to the police?

A. That's right.

Q. What did you tell them? A. I stated it was a red dotted shirt.

82 Q. Did you say red flowers on it? Red shirt with flowers?

A. I might have said that, sure.

Q. Was he wearing a hat? A. A straw hat.

Q. What color? A. It was I believe dark gray, maybe brown.

Q. Which was it? A. Brown, light brown or gray, one of the two.

MR. CAPUTY: May I have this marked as government's exhibit No. 5 for identification?

(Government's exhibit No. 5 was marked for identification.)

BY MR. CAPUTY: I show you what has been marked as government's exhibit No. 5 for identification, a straw hat and I ask you to examine it and tell us whether you have seen that before? A. Yes, that is the hat.

Q. That is the hat? A. Yes.

Q. Who was wearing it? A. Clemons had a hat like it.

Q. Now, let's get back to that seat again. What seat number was he seated in? A. I don't know the exact seat number he was in.

83 MR. SEWELL: This is repetition.

MR. CAPUTY: I am declaring surprise, if Your Honor please.

THE COURT: All right.

BY MR. CAPUTY:

Q. Do you remember talking to me in my office in this building?

A. Yes, I do.

Q. And at the time that you talked to me in my office in this building, didn't you tell me he was in seat 21? A. I didn't tell you he was in seat 21 because we was all sitting in the wrong seats.

Q. I know you were sitting in the wrong seats. Didn't you tell me on this occasion in the presence of other people in there, Wills and Washington that he was seated in seat No. 21? A. I never made a statement that he were sitting in 21, never.

Q. All right. Did you tell the police what seat he was sitting in?

84 A. I know we was --

Q. Did you tell the police what seat he was sitting in? A. Yes.

Q. Didn't you tell the police he was sitting in seat 21? A. No, I did not. I don't recall that.

Q. You don't recall or you didn't tell them? A. I don't recall telling them because we was all sitting in the wrong seats.

Q. He was seated to your right? A. Right.

Q. You were seated in seat 23? A. 23.

Q. And who was the first person to your right? A. It was Wills.

Q. Wills. Now, you don't remember who was seated to the right of Wills? A. Yes, I know who.

Q. Who? A. The defendant.

Q. He was seated to the right of Wills? A. That's right. I don't know the seat number he was in.

Q. The seat to the right of Wills? A. Yes.

85 Q. And there was no seat between Wills and him? A. No, it was on the outside.

Q. But he was seated directly to the right of Wills? A. Right.

MR. CAPUTY: That's all.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Cox, when you were shown this hat, you said, this is the hat, how do you know this is the hat? A. Well, I don't know.

Q. Why did you say that is the hat? A. This is the color of the hat.

Q. I see. Why did you pay so much attention to his hat and remember the color of his hat for five or six months later? A. I mean all of us were up there and --

Q. Did you have a hat on?

THE COURT: You are not letting him answer the question, sir.

THE WITNESS: All of us work together and we all dress and go there. I mean, a lot of times we get things we admire and at this particular time we was there and he had a straw hat and I had a straw hat.

86 Q. Anybody else have a straw hat on? A. Oh, yes. Darrell.
Q. What color was it? A. Oh, I think Darrell had a dark gray one.
Q. You and Wills were at work when the police came out to pick up the stubs? A. Yes.

Q. Were you present when Wills gave his stub over? A. Yes.
Q. You were there? A. Yes.
Q. Did you hear the conversation that he had with the police officer?
A. No, I didn't.

Q. Do you know he told the police officer that you were sitting in seat number 22?

MR. CAPUTY: I object.

THE COURT: I will sustain the objection. He said he didn't hear the conversation.

THE WITNESS: I didn't hear it.

87 BY MR. SEWELL:

Q. What seat did your stub call for? A. My stub called for 22.
Q. Why didn't you sit in it? A. Because I made -- we all go to the game and the first seat I got to I sat down.
Q. Well, you must have passed by 19, 20, and 21. A. No, I didn't pass no 19. The rows to the right runs smaller.
Q. You either passed 24 or 19? A. I passed 24.
Q. That was the first seat? A. I was sitting next to the aisle.
Q. You didn't want to sit there? A. No.
Q. So you sat in 23? A. There was a vacant seat so I sat in it.
Q. Did you have your stub at work with you? A. No, I left it at home.

Q. Where did you go after the game? A. I went home.
Q. How did you go home? A. I work a cab, me and Darrell and
88 his cousin, I believe, he dropped me off at 8th and Florida Avenue, Northeast.

Q. Is that Butts? A. Butts.
Q. Where do you live? A. I live at 327 K Street, Southeast.
Q. Where did he drop you? A. At 8th and Florida Avenue, N.E.

Q. Who else was in the cab? A. Me and Butts and his cousin.

Q. Who is the cousin? A. The one that drives the cab.

Q. Washington? A. Yes.

Q. Was Clemons supposed to go with you at that time? A. No, he was not with us.

Q. Was he supposed to be with you? A. We was supposed to meet after we came out of the game.

Q. Where? A. You know the entrance as you come down the ramp out of the ball game.

Q. Who came out of the game with you? A. I think me and Wills 89 and Butts walked on down there.

Q. Wills Senior? A. Yes.

Q. You testified that Wills, Sr., gave you your ticket? A. Yes.

Q. You are sure you got it from him? A. Yes.

Q. Wills, Jr., didn't give it to you? A. No, I got mine from Wills, Sr.

Q. Where were you when he gave it to you? A. Standing in the front door at work.

Q. How were you dressed that night, sir? A. Who me?

Q. Yes. A. A pair of light gabardine pants and one of these -- what you call a straw hat and I think I had a brown shirt on.

Q. How was Wills dressed? A. He had on a gabardine pants and a plain red shirt.

Q. How about Butts? A. Butts he had on a -- I can't recall what he had on.

Q. You only saw Clemons at the game and you really didn't see him too well there, did you? A. At the game.

90 Q. Yes. A. We were sitting there together.

Q. You walked out with Butts, didn't you? A. Yes.

Q. And you rode in a cab with Butts to 8th, Northeast, didn't you? A. 8th and Florida, Northeast.

Q. You don't remember what kind of shirt he had on? A. No, I don't.

Q. I see. But you remember what Clemons had on? A. I mean

I am more attached to Wills and them because Butts don't work for the same people that I work for.

Q. Where do you work? A. I work Glass Distributors.

Q. Who does Butts work for? A. Miles Glass Distributors.

Q. If these tickets are given to employees of Glass Distributors, how did Butts get one of them? A. I mean Mr. Wills give him one.

Q. He did? A. Yes.

91 Q. Was there some arrangements made between Clemons and you and Butts where to meet after the game? A. No, because Clemons was at the game when I got there.

Q. This is after the game? A. No.

Q. He didn't tell you that he was going across to Ann's to get a hot dog? A. I heard Butts say that he was going over to Ann's to get a hot dog and Clemons was supposed to go over to Ann's and get a hot dog.

THE COURT: Did you hear Butts say that Clemons was to go and get a hot dog?

THE WITNESS: Yes.

BY MR. SEWELL:

Q. You didn't all wait for him a while? A. We waited for a while.

Q. Where was this cab parked when you left? A. Parked way down on 7th and S.

Q. Do you know a man that works over there by the name of Miller, 19 or 20 years old, Miller or Murphy? A. Dan Miller?

Q. Yes. A. Sure.

92 Q. Were you present when he had a conversation with Wills, Jr., about Mrs. Waters in this case?

MR. CAPUTY: I object to the form of the question, Your Honor, because he is assuming something that is not in evidence.

Q. Did you hear this Miller say anything at all -- have a conversation about Clemons in this case? A. No, I didn't.

Q. You didn't? A. No.

MR. SEWELL: That is all.

REDIRECT EXAMINATION

MR. CAPUTY: Did you turn over the stub you had to the police?

A. I surely did.

RECROSS EXAMINATION

MR. SEWELL: Who else have you talked with about this case?

A. No one but Mr. Caputy and the officers.

93 Q. Officer Bonaccorsy and who else? A. No one else. A lady and gentleman came up to the building but that is all.

Q. Who were they? A. I don't know.

Q. Who did they say they were? A. Oh, they was taking down statements and stuff like that. I don't know who they were.

Q. Did they take a statement from you? A. Yes.

Q. Well, didn't they identify themselves? A. Yes, but I can't recall. I don't know.

Q. But you remember the hat? A. Yes. I remember the color but I don't know whether that is the hat or not.

MR. SEWELL: No further questions.

THE COURT: You may step down.

ALBERT DOWE

was called to the witness stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. State your name, sir. A. Albert Dowe.

94 Q. Where do you work? A. Miles Glass Company.

Q. Where is that located? A. 1741 Johnson Avenue, Northeast.

Q. Do you know where the Glass Distributing Company is?

A. Yes, sir, same building.

Q. Do you know the defendant Clarence Clemons? A. Yes.

Q. Do you see him here in the court room? A. Yes, sir.

Q. Point him out. A. That's him.

MR. SEWELL: For the record, his name is Charles.

BY MR. CAPUTY:
Q. Would you point the defendant Clemons out, please? A. Yes.

Q. What does he have on? A. A shirt on.

MR. CAPUTY: May the record reflect the identification, Your Honor?

THE COURT: Yes, sir.

BY MR. CAPUTY:

95 Q. Directing your attention to August 15, 1961, can you tell us whether you had gone to a ball game? A. Yes, sir.

Q. And did you go to the ball game alone or with anyone else? A. I went with someone else.

Q. With whom? A. Charles Clemons.

Q. Charles Clemons? A. Yes.

Q. That's this person? A. That's right.

Q. Where did you get your ticket? A. From Glass Distributors.

Q. Who gave it to you? A. The foreman of Glass Distributors.

Q. James Wills, Sr. A. Junior.

Q. And not the older person, Mr. Wills, Sr. A. His son.

Q. Did he give you one ticket or more than one ticket?

96 A. He gave me one ticket.

Q. Now, this ticket that you had for the game, do you recall what seat number it was for? A. No. 20.

Q. And what seat did you sit in? A. No. 20.

Q. Did you sit in 20? A. Yes.

Q. You did? A. Yes.

Q. What seat was the defendant Clemons sitting in? A. 21.

Q. Did there come a time that the game ended? A. Yes.

Q. Was the defendant Clemons there until the time the game was over? A. Yes.

Q. Now, did you come -- did there come a time that you left the ball park? A. Yes.

Q. Did you leave alone or with anyone else? A. I left with someone else.

97 Q. Did you leave with Clemons or with someone else? A. I left with Charles Clemons.

Q. What time did you leave? A. I don't recall.

Q. You don't recall? A. No.

Q. But he stayed until the game was over? A. Yes.

Q. Do you recall how Charles Clemons was dressed on this occasion of August 15, 1961? A. No.

Q. Not at all? A. No.

Q. Can you tell us whether he had a hat on? A. No.

Q. Do you know, sir? A. I am not sure.

Q. You are not sure? A. No.

Q. Now, what did you do with your rain check or the stub or the stub of the check of the ticket? A. I kept it.

98 Q. Did there come a time that you gave it to someone?

A. Yes, I gave it to the detective.

Q. I show you this ticket, Section Q, row 4, seat 20. Does that look like the ticket that you had on this day, August 15, 1961? A. Yes.

Q. Is that it? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. When did you turn it over to the officer? A. Well, it must have been on the 16th.

Q. Was it at work? A. No, it was during the drive back to my house.

MR. CAPUTY: Nothing further of this witness.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Dowe, Maxwell Washington is your cousin? A. Yes, sir.

Q. Did you turn his stub over to the police, too? A. No, I didn't.

Q. Who did?

99 Didn't you take the police out there to get it? A. Oh, yes, I did. I had forgotten that. I went to his house and got it.

Q. Now, you work for Miles Glass Distributors? A. Yes.

Q. Didn't you and Clemons ride the bus home together that afternoon? A. From work?

Q. Yes. A. Yes.

Q. Did you and Clemons make arrangements to go to the game together? A. Yes.

Q. You told him a friend of yours would pick you up in a cab or something? A. Oh, I don't know whether I did or not. I have forgotten now but we went to the game together.

Q. Did you call him before you left home to go to the game?

A. Yes.

Q. Didn't you tell him that your friend couldn't make it so you met on the bus? A. Yes, that's correct.

100 Q. Now, are you sure you didn't have two of these tickets?

A. No. Wait a minute. I did have two tickets.

Q. All right. Who did you give the second ticket to? A. I gave it to my cousin.

Q. Was that Maxwell Washington? A. Yes.

Q. Where did you see him? A. We met him at the ball park.

Q. And did you have the ticket on you or did you have to get it from somebody when you saw -- A. I had it with me.

Q. On you? A. Yes.

Q. Now, after you and your cousin and Clemons got together, was there anybody else there? A. Yes, James Wills, Sr., and Cox came later.

Q. I mean before you went in the ball park. A. Did I see anyone else?

Q. Yes. Did you go anywhere else before you went into the ball game? A. No, sir.

101 Q. Well, let me refresh your recollection. Did you put up a \$1.75 a piece to buy some whiskey? A. Yes.

Q. Did you do that? A. Yes.

Q. And when you got in the game, who was there in the seats?

A. I don't recall.

Q. Anyone there? A. No one there when I went in.

Q. And you sat in seat 20? A. Yes.

Q. And Charles sat in 21? A. Yes.

Q. Now, what kind of shirt did you have on that night? A. I don't remember what kind of shirt I had on, sir.

Q. You don't know how Charles was dressed, do you? A. No.

Q. Now, did you see Charles the next morning? A. Yes, I did.

Q. And did you have a conversation about what happened to you last night? A. Yes, I did ask him where did he go.

102 Q. What did he tell you?

MR. CAPUTY: I object, Your Honor.

THE COURT: This is hearsay, sir.

BY MR. SEWELL:

Q. Did he ask you where you went? A. I don't recall, sir.

Q. Well, now, do you know a fellow named Miller out there on the job who works for the Distributors, Glass Distributors? A. Yes.

Q. A young fellow? A. For Glass Distributors?

Q. Yes. A. I may know him. I am not sure now.

Q. You know an old fellow named Miller but you are not sure of the young fellow named Miller? A. I am not sure.

Q. Wills, Jr. works for Glass Distributors. Did you pay him for these tickets? A. No, he was giving them to me.

Q. He gave them to you? A. Junior gave them to me.

Q. Not senior? A. No.

103 Q. He gave you two? A. Yes.

MR. SEWELL: That is all I have.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Do you know where Maxwell Washington is today? A. No, I don't.

Q. Do you know where he lives? A. Yes.

Q. Where? A. 5317 9th Street, Northwest.

Q. 5317 what? A. 9th Street, Northwest.

RECROSS EXAMINATION

BY MR. SEWELL:

Q. Does he drive a metropolitan cab? A. Yes.

Q. Did he have on a red shirt that night? A. I don't recall what kind of shirt he had on.

Q. Was Clemons supposed to ride in the cab home? A. Yes, he was.

104 MR. SEWELL: I have nothing further.

THE COURT: You may step down.

MR. CAPUTY: Would you see if Maxwell Washington is out there, please?

May we approach the bench?

(Bench Conference.)

MR. CAPUTY: Your Honor, this witness Maxwell Washington, he was personally served. He came into my office with this witness on Friday that is going to take the stand now and he has a family and he was starting a new job and he was to call my office today and he said he wasn't coming in today because it was important that he start the new job and I told him I would permit him to go to work and to call me and he left a number with the firm and he has not called.

Since he was personally served, I would like an attachment for him, if Your Honor please, for tomorrow morning.

THE COURT: Where is he working, sir?

MR. CAPUTY: My secretary has it.

THE COURT: Wouldn't a forthwith subpoena do just as well?

MR. CAPUTY: Yes.

MR. SEWELL: I would like a subpoena for Wills, Jr.

105 THE COURT: Can you help Mr. Sewell?

MR. CAPUTY: I will do what I can, Your Honor.

(End of Bench Conference.)

(Mr. Caputy and Mr. Sewell conferred.)

(Bench Conference.)

MR. CAPUTY: I would like for Your Honor to sign a forthwith subpoena for Wills, Jr.

THE COURT: Off the record.

(End of bench Conference.)

ELMER JACKSON

was called to the stand on behalf of the Government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. State your name, sir. A. My name is Elmer Jackson.

Q. Do you know Charles Clemons? A. I do.

Q. Is he a relation of yours? A. Yes.

Q. What is he? A. He is my step son.

106 Q. Now, directing your attention to August 15, 1961, did you go to a ball game? A. I did.

Q. And can you tell us whether your step son, Charles Clemons had gone to the ball game? A. I do not know if he went to the ball game.

Q. You don't know? A. I don't know whether he went to the ball game or not.

Q. What seat were you sitting in? A. I was in the pavilion.

Q. In the pavilion where? A. In the grandstand.

Q. What seat did you have? Where did you get your ticket?

A. Pardon?

Q. Where did you get your ticket? A. I got my ticket from Charles.

Q. Charles who? A. Charles Clemons.

Q. When you got your ticket from Charles Clemons, did he have a ticket also for the ball game? A. I do not know.

Q. Now, do you recall what seat number was on that ticket that you had? A. I do.

107 Q. What was it? A. 424.

Q. 24? A. 424.

Q. Do you mean row four? A. I don't know but it was 424.

Q. Well, showing you part of government's exhibit No. 3 for identification, was a ticket showing row four, seat 24, does that look like the ticket that you had? A. That looks like the ticket I had.

Q. Now, who was seated next to you? A. I do not know.

Q. You have no idea? A. No, I have no idea.

Q. Did you recognize anybody at the ball game, sir? A. Yes, I
recognized -

Q. In the same row you were seated in? A. I do.

Q. Who was that? A. My brother was one of them.

Q. Who? A. My brother.

108 Q. What is his name? A. Herman is his name.

MR. CAPUTY: I have no further questions. Let me ask one question.

BY MR. CAPUTY:

Q. Did there come a time that the police -- did you give the police
a stub? A. No, I didn't.

Q. You did not? A. I did not.

Q. Did anybody in your family give the police a stub? A. Yes.

Q. Who? A. My wife.

Q. Can you tell me whether your wife gave the police this stub,
ticket 424? A. I beg your pardon?

Q. Is this the stub your wife gave to the police? A. If it is 424,
that is it.

Q. Is that the stub your wife gave to the police? A. If it is 424,
it is.

109 Q. Look at it and tell me. A. If it is 424.

Q. Is that your stub? A. That is the one, sir.

MR. CAPUTY: I have nothing further.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Jackson, you didn't use this seat, did you? A. Pardon?

Q. You didn't use seat 24, row four, did you? A. Just the ticket.

Q. Did you sit in this seat? A. No, sir, I didn't.

Q. So you were in the grandstand somewhere? A. I was in the
pavilion, sir.

Q. Now, where were you when Charles gave you this ticket?

A. Outside of the stadium.

Q. Where was Charles? A. At the stadium.

Q. Didn't you go to the ball park and didn't he go in the gate through the turn-style at the same time and give the man the tickets? A. No, sir.

110 Q. Tell us what happened? A. Well, I had a passenger -- as a matter of fact, I had two passengers the night of the ball game and I drove up to the ball park and let my two passengers out and just then someone said taxi and so I say yes, get in and so when I looked around, there was Charles and I says go ahead and stop playing with me and he jumps up and he says, do you want to go to the game and so I hesitated a while and I said, yes, I will go. He says, Wills is going to be there, Wills, Sr. and I said I will sure to be there then and I taken the ticket and I guess I must have gotten in just about the time the game started.

Q. Did you go to this section at all? A. No, sir.

Q. Did you look down into this section? A. No, sir.

Q. You didn't see Charles at the game? A. No, sir, I didn't see any of the boys at the game. I was not in that seat, sir.

MR. SEWELL: That is all.

REDIRECT EXAMINATION

BY MR. CAPUTY:

111 Q. What did you do with this ticket 424 that your wife gave to the police? A. What did I do with it?

Q. Yes, sir. A. I used it for the game. You got the stub there.

Q. You sat in that seat? A. I did not sit in that seat. I wasn't with any of the boys whatsoever.

THE COURT: I understood you to say you used this ticket to get into the ball game but you did not sit in the seat which the ticket called for?

THE WITNESS: That is right, Your Honor.

MR. CAPUTY: I have nothing further.

THE COURT: You may step down.

We will recess for ten minutes with the same admonition, Ladies and Gentlemen.

(Whereupon, a short recess was taken.)

JOHN J. BIAS

was called as a witness on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

112 BY MR. CAPUTY:

Q. Would you state your name and assignment, please?

A. Det. John J. Bias, attached to the First Precinct, Metropolitan Police Department, Washington, D. C.

Q. What was your assignment, sir, on August 15, 1961?

A. Assigned to plain clothes, First Precinct, working five to two a.m. tour of duty.

Q. Now, directing your attention to August 15, 1961, did you go to 1213 I Street, Northwest? A. Yes, sir, I did.

Q. Do you today know a person known as Meta Waters? A. Yes, sir, I do.

MR. SEWELL: Is he testifying from memory or using notes?

THE WITNESS: I don't have it open.

BY MR. CAPUTY:

Q. Do you see her sitting here in the court room? A. In the second row from the rear with the white hat on.

MR. CAPUTY: May the record show, Your Honor please, that he has identified the woman Meta Waters?

THE COURT: Yes.

BY MR. CAPUTY:

Q. Now, directing your attention to August 15, 1961, did you see 113 Meta Waters at 1213 I Street, Northwest? A. Yes, I did.

Q. About what time was it that you saw her? A. It was about 12 mid-night.

Q. And whereabouts at 1213 I Street, Northwest, had you seen her?

A. I saw her at the Waters Employment Agency.

Q. What part of the premises did you see her at that time?

A. In what would be the living room. It's a room just beyond the office.

Q. Can you tell us, sir, how this person Meta Waters was dressed at the time that you had seen her on August 15, 1961 in those premises?

A. She had on a nightgown.

Q. Did you have an opportunity, sir, to see her face? A. Yes, I did.

Q. What was the lighting conditions in the premises at 1213 I Street, Northwest? A. It was fair. It wasn't too bright but enough so you could see.

Q. Did you see her face? A. Yes.

114 Q. What was the condition of her face? A. The left side of her face was bruised and there was a little blood coming from her lip.

Q. Did you see her hands, too? A. Yes, she complained of the left wrist hurting her.

MR. CAPUTY: May I have these photographs, Your Honor, marked government's exhibit No. 6 for identification.

(Government's exhibit No. 6 was marked for identification.)

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as government's exhibit No. 6 for identification, two photographs and I ask you to examine them and tell us whether you can depict -- whether they depict Meta Waters as you saw her on August 15, 1961? A. Her face, yes, that is correct.

Q. Do those photographs depict her as you saw her on that day? A. The left side was not quite as dark as it was in these pictures.

Q. How about the hand? A. The same thing, the hand was bruised, started to discolor.

MR. CAPUTY: I offer government's exhibit No. 6.

115 THE COURT: If there be no objection, they will be received.

MR. SEWELL: I have no objection to him offering them but if he is going to offer them into evidence, I have to object to it.

THE COURT: Come to the bench.

(Bench Conference.)

THE COURT: What is your objection?

MR. SEWELL: My objection is who took them and when taken and this officer did not take them.

MR. CAPUTY: No but under the cases he can testify that they represented her as he saw her.

MR. SEWELL: The doctor was not shown the pictures and I don't know when they were taken, what date.

THE COURT: I will treat them as offered at this time but try to see if you can't find out something about them.

MR. CAPUTY: I will bring the man in tomorrow.

THE COURT: I will treat them as offered as of this time.

(End of Bench Conference.)

BY MR. CAPUTY:

Q. Now, at the time you had seen her at the premises at 1213 I
116 Street, Northwest, can you tell us, sir, what, if anything, you ob-
served in the premises? A. Well, as I was talking to her I observed
a ticket stub from the date of August 15, 1961, Griffith Stadium and that
was lying on the rug.

Q. Now, what, if anything, did you do with that ticket stub that
you had seen? A. I left it there until the sex squad arrived.

Q. All right. Now, prior to the time that you left that there, had
you made any recordation of that ticket stub you had seen? A. Yes, I
did.

Q. Did you make that immediately at the time you had seen it?
A. Yes.

Q. Do you recall what recordation you made without looking at
any notes? Do you recall it? A. It was dated August 15 and I believe
the seat-box Number and Section was Q-424, I believe. I have the thing
here.

Q. Did you make a recordation then? A. Yes, I did.

Q. Is your memory exhausted at the present time, sir, concerning
the number of the ticket. A. Yes, I would have to refer to my notes.

117 MR. CAPUTY: May he look at his notes, if Your Honor please?

THE COURT: Yes.

THE WITNESS: It is Senator rain check ticket, August 15, 1961, lower grandstand, the price of it \$2.50 and the number of it Q-421.

BY MR. CAPUTY:

Q. I show you this ticket, part of government No. 3, and ask you to examine it and tell us whether you can identify it, that ticket? A. Yes, that is the ticket.

Q. That is the ticket what, sir? A. That I observed lying on the rug in the living room of Mrs. Meta Waters place of business.

Q. When? A. Just about mid-night on the night of the 15th or 16th.

Q. Showing you, sir, what has been marked for identification as government's exhibit No. 1 for identification, a piece of clothing, I ask you to examine it and tell us whether you have seen that before? A. Yes,

118 I believe I did. I believe this is the gown that Mrs. Meta Waters was wearing that evening.

Q. Now, did you talk to the complaining witness, Meta Waters? A. Yes, I did.

Q. And where was it that you talked to her? A. In this living room at her office.

Q. Now, what was the condition of the complaining witness Meta Waters at the time you talked to her on August 15, 1961 at 1213 I Street, Northwest? A. Well, she was injured and she had bruises on her neck and she had injury to the left side of her face and her wrist and she seemed in a state of shock.

Q. Did she tell you what, if anything, had happened? A. Yes, she did.

Q. What did she tell you? A. She stated about 11:30 p.m. that evening she had returned from the National Theater where she had seen the Music Man and she decided to stay in town instead of going to Virginia and she went up to her office where she had a bed and she went in and changed clothes and went over to make a sandwich and as she was making a sandwich a subject went over and grabbed her and hit

119 her and dragged her into the living room and struck her again and knocked her to the ground and raped her.

She stated that this subject got up and went into the bathroom. There is an entrance there in the living room and when the subject went into the bathroom, she ran out and got help at an apartment house in the 1200 block of I Street, Northwest.

Q. Now, was any statement made by her as to whether the person was a person of the negro race or the white race? A. Yes, there was.

Q. What did she say? A. She stated that it was a light skinned negro male about 35 years of age, five foot eight and somewhere around 160 to 180 pounds and was wearing a red flowered shirt and a light straw hat and I don't believe she gave us the pants colors.

Q. What kind of shirt? A. A red flowered designed shirt she said.

MR. CAPUTY: Nothing further, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Det. Bias, you said you got to the -- what time did you arrive at the scene? A. I made a notation of 12 mid-night.

120 Q. What time did the call come in at No. 1? A. I didn't get the call. We were at 12th and New York when the man on the beat when he said he thought there may be a rape over in the 1213 I Street and we walked from 12th and New York which was a matter of 200 feet or 300 feet.

Q. Were there any other officers there when you got there?
A. The wagon had just arrived.

Q. Were there officers inside? A. Yes.

Q. They were inside? A. Yes.

Q. Where in the building were they? A. They were with Mrs. Waters, I believe.

Q. Where in the building were they? A. I believe in the living room.

Q. Where the incident occurred? A. I believe so, yes.

Q. What are those officers names? A. Vernon I believe was one of them and I am not sure who his partner is.

121 Q. Are they here today? A. No, not to my knowledge.

Q. This ticket stub you said you found, was it in plain view? A. Yes. It was near a hassock over to the side of the hassock in the room.

Q. Did you pick up the stub? A. No, sir, I did not pick the stub up.

Q. What did you do? A. I let it lay there until the sex squad came and then when they took over the investigation we assisted them.

Q. Who from the sex squad? A. Det. Holden.

Q. Did you point out the ticket to him? A. Yes, sir.

Q. He knows you, doesn't he? A. As of that time he knows me, yes.

Q. Do you recall what you actually said to him when he walked in there? A. I do not know the exact words.

Q. Had you taken the notation of the ticket stub before he got there or did you take it after he picked it up? A. Before he got there.

122 Q. Now, how did you do that? A. I was seated in the chair talking to Mrs. Meta Waters and when I observed the stub there, I asked Miss Meta Waters if she had gone to a ball game or whether anyone else had gone to a ball game and had been in this particular living room and she said no.

Q. What did you do? A. I went over and jotted down the information from the stub into my notebook and let it lay there.

Q. You previously testified that the light was not too good? A. It wasn't as light as it is here but there were lights there where you could distinguish various things there.

Q. Well, now, you are sure nobody moved the stub over by the hassock? A. To my knowledge, no one moved it, no.

Q. It was not in the middle of the floor? A. It was over to the side of the hassock, yes, sir.

Q. Now, did you take fingerprints -- were fingerprints taken in this apartment? A. The Identification Bureau did respond and I am

sure they checked for fingerprints. As a matter of fact, I think it was
123 Officer Jones from the Identification Bureau.

Q. Is officer Jones a witness here? A. No.

Q. Anybody from Identification Bureau here? A. To my know-
ledge they are not.

Q. Did you tell us everything that Mrs. Waters told you? A. Yes.

Q. She didn't tell you that this man had a six inch knife? A. She
did mention a knife at the kitchen where she was making this sandwich
and there is a small little area there that is set up as a kitchen and at
that time she did mention a knife.

Q. What did she say about it? A. The person held a knife and
threatened to kill her.

Q. You just forgot to tell us that? A. Possibly, yes.

Q. Did you reduce her statement to writing? A. No, I did not.

Q. You didn't? A. No, I did not.

Q. Who was the sex squad officer that responded there first?

A. Det. Holden.

124 Q. What time did he get there? A. I would say 15 minutes or so
after we arrived.

Q. What time did you arrive? A. 12 mid-night, maybe.

Q. This woman told you this happened -- A. Somewhere be-
tween 11:30 and 11:45, thereabouts.

Q. Did you check this apartment from where the call was made?
A. Where she ran to, no. I had talked to the person on the telephone.

Q. Sir? A. I talked to the person on the telephone at the apart-
ment.

Q. What person? A. The person at the apartment and I checked
whether she had gone there and he stated that some person was there.

Q. When did you talk to him on the telephone? A. About a week
after or so. I talked to a person at the apartment to verify as to whether
she had been there.

Q. Who did you talk with? A. I can't -- I didn't take the name
down.

125 Q. Well, how could that person verify something -- A. They told me they heard of this incident happening that night.

Q. And that verified to you that she was in there, is that right?

A. Yes.

Q. You don't know who you were talking with? A. No.

Q. Day time or night time when you talked to whoever it was?

A. It was in the day time. I got the person who was on duty and I got his name and gave it to Mr. Caputy at that time.

MR. SEWELL: Nothing further, Your Honor.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. After you talked to me, at my request did you find out who was working at the apartment house? A. Yes.

Q. Did you get a name for me? A. Yes.

Q. Do you recall what the name of the person was? A. No, sir. I called your office and left the information at your office.

126 MR. CAPUTY: That is all.

THE COURT: All right, sir, you may step down.

WILLIAM R. HOLDEN

was called as a witness on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. State your name and your assignment. A. Det. William R. Holden, assigned to the Metropolitan Police Department, sex squad.

Q. How long have you been assigned to the sex squad of the Metropolitan Police Department? A. Two years, sir.

Q. Now, directing your attention to August 15, 1961, were you working? A. I was, sir.

Q. What was your shift or duty? A. Mid-night to eight in the morning.

Q. Mid-night of what? A. August 16.

Q. Now, did there some a time during the course of your shift of

duty, sir, when you responded to 1213 I Street, Northwest? A. I did,
127 sir.

Q. And about what time was it that you responded there? A. At approximately 12:20 a.m. on the 16th.

Q. Do you today know a person known as Meta Waters? A. I do.

Q. At the time you responded there, did you see her there? A. I did.

Q. Do you recall how this person was dressed when you had seen her there at that time? A. At that time she had on, I believe, a blue skirt and a white blouse.

Q. Well, now, did there come a time when she was taken anywhere? A. Yes, sir.

Q. Where was she taken? A. I took her to the Woman's Bureau and from there to D. C. General Hospital.

Q. Now, when you were in the premises 1213 I Street, Northwest, did you have an opportunity to observe the face of this person Meta Waters? A. I did, sir.

128 Q. And what was the condition of her face? A. She had a large bruise here black and blue.

Q. You are pointing to the right side. Do you recall which side the bruise was on? A. Left side, sir and her left hand was all discolored.

Q. Do you see that person here in court today, this person Meta Waters? A. I do.

Q. Would you point her out, please? A. She is sitting on the end of the third aisle, third row.

Q. Is that the one? A. Yes, sir.

MR. CAPUTY: May the record show, Your Honor, the identification of Meta Waters by the witness?

THE COURT: Yes, sir.

BY MR. CAPUTY:

Q. Showing you government's exhibit No. 6 for identification, two photographs, I ask you to examine them and tell us whether they depict the face and the hands of Meta Waters as you saw her on August 16, 1961?

A. Yes, sir, with the exception at the time I responded there, there
129 was some blood around her mouth but other than that, that is it.

Q. Now, can you tell us, sir, whether you recovered anything
in the premises? A. I did, sir.

Q. What, if anything, did you recover in the premises? A. A
base ball stub from a baseball game.

Q. Do you recall what row and what seat number that stub was, sir?
A. Section Q, row four, seat 21.

Q. Showing you, sir, a ticket as part of government's exhibit No.
3 for identification. I ask you to examine it and tell us whether you can
identify this ticket? A. Yes, sir, I can.

Q. When was it that you first saw government's exhibit 3 for
identification? A. It was part -- shortly after 12:20 a.m. on the 16th.

Q. And where was it when you first saw it? A. It was lying on the
floor in front of an ottoman in the second room of the first floor office.

Q. Was it an office or what kind of room was it? A. Well, it's
an office in the front and the second room has a television and a chair
130 and more like a living room and there is a long hall way and in
the rear a bedroom.

Q. Where did you first see that part of government's exhibit No.
3? A. This was in the second room which I would call the living room.

Q. Did you turn that over to any police officer? A. I did, sir.

Q. Of the sex squad? A. I turned it over to Det. Bonaccorsy.

MR. CAPUTY: I have nothing further.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Now, sir --

MR. CAPUTY: If Your Honor please, I overlooked something.

THE COURT: All right, sir.

DIRECT EXAMINATION (Further)

BY MR. CAPUTY:

Q. Showing you, sir what is marked as government's exhibit No.
1 for identification, this piece of clothing, I ask you to examine it, sir,

and tell us whether you can identify it? A. Yes, sir.

131 Q. How do you identify that, sir? A. By initials, sir.

Q. Where? A. A. S. B. here, that is Angelo S. Bonaccorsy, and it should be mine in here somewhere.

Q. Now, when was it that you first saw government's exhibit No. 1 for identification? A. That night I asked Mrs. Waters for them and she turned them over to me.

Q. Turned that over to you? A. Yes.

Q. What did you do with it after you got it? A. I turned it over to the Det. Bonaccorsy and he submitted it to the FBI laboratory.

Q. Did she give you any other clothing, Mrs. Waters? A. Yes, sir, she gave me a pair of snuggies and a blouse, also.

Q. What kind of blouse? A. A lad's blouse.

MR. CAPUTY: Would you indulge me a moment, Your Honor?

THE COURT: Yes, certainly.

132 MR. CAPUTY: May I have this marked as government's exhibit 1-A for identification?

(Government's exhibit No. 1-A was marked for identification)

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as government's exhibit 1-A for identification, some kind of clothing, and I ask you to examine it and tell us whether you can identify it? A. Yes, this is part of the -- the white blouse that was turned over to me, also. I identify it by the initials W. R. H. and also by A. S. B.

Q. When was it that you first saw government's 1-A? A. That was also turned over to me shortly after 12:20.

Q. What did you do with government's 1-A? A. I turned it over to the -- to Det. Bonaccorsy.

MR. CAPUTY: I have no further questions.

CROSS EXAMINATION (Cont'd)

BY MR. SEWELL:

Q. Officer, this nightgown, did you ever find your initials on that

nightgown? A. No, I didn't but I think I can if you give me the time.

133 Q. When did you turn it over to Det. Bonaccorsy? A. Shortly after eight a.m. in the morning.

Q. Now, you initialed the ticket that you found? A. Yes, sir.

Q. Now, do you know Det. Bias from No. 1? A. Yes, sir, I do.

Q. He was at the premises 1213 I Street, Northwest, when you got there? A. He was, sir.

Q. And did you have a conversation with him? A. Yes, sir, I did.

Q. What was the nature of that conversation? A. Well, he told me about the offense that Mrs. Waters had told him had been committed.

Q. Did he tell you anything else? A. No, not that I can recall.

Q. You got there about 12:30, is that right? A. 12:20, sir.

Q. You are sure it's 12:20? A. According to my notes it was 12:20 when I received the run.

Q. You received the run at 12:20 and where were you when you received it? A. I was at headquarters and I think I received the run 134 about 12:10.

Q. Do you recall testifying at this preliminary hearing on the first of September, 1961? A. Yes, sir, I do.

Q. And you were asked the question: "Well, what time did you get the call and you said somewhere around 12:30". That is on page 30 of the official transcript of the preliminary hearing. A. Yes.

Q. And you arrived there at 12:30 and you said I would say around 12:30. I don't know the exact time of the call.

Now, you found this ticket, didn't you? A. Yes, sir.

Q. Nobody pointed it out to you, did they? A. Well, yes, Det. Bias drew my attention to it. He said there is something that is laying there. When we saw the scene where the offense occurred, he said this is it here. I don't know what to do or words to that effect and I picked it up and saw it was a baseball ticket.

Q. On page 32 of this transcript of the preliminary hearing, do you recall being asked these questions and giving these answers: So are you

135 saying that the only officers who preceded you there were uniform officers, I take it. These are squad car officers, that's the question. No, there was a squad car there and there were also plain clothesman there.

Who are the plain clothesman. You said Bias and Acree, is that right. Yes.

What squad are they on? No. 1 Precinct.

To your knowledge, is the question, had they talked with the complaining witness: I would say they had, yes.

And to your knowledge, had she pointed out to them where she had been raped. I can't say whether she had or not, is your answer.

Now, if the ticket is still on the floor, Officer Holden, apparently you were the first officer to visit that room and find the ticket.

I was the first officer that found the ticket. Now, whether they had been in the room or not, I don't know.

Well, was the ticket in plain view? Yes, it was.

Did you see it as soon as you walked in the room?

No, I didn't see it as soon -- and you stopped there.

Where is the ticket? I don't know.

136 Now, you told us now that the officer pointed it out to you? A. No, I didn't say he pointed it out. I said we were both in the room and officer Bias said this is where the rape happened and then he said, I don't know what this is and I went and reached down and picked it up and took it and it was the ticket.

Q. Now, of course, that is a little different from your testimony on the first --

THE COURT: That will be for the jury to determine, sir.

BY MR. SEWELL:

Q. Now, Officer, after you turned this stub over to officer Bonaccorsy, did you pick up any stubs from any of these other people?

A. No, sir.

Q. Q21 is the only one you handled? A. That's correct.

Q. To your knowledge, sir, that night, did the Identification

Bureau come out and take fingerprints of that premise? A. Yes, sir, they did.

137 Q. Now, do you know who the officer was from the Identification Bureau? A. Private Jones.

Q. He took prints of what part of the house, to your knowledge? A. He took them from the front door leading to the hall way and also door jams in the hall way and I don't know about the inside of the second room.

Q. Well did -- A. Hall way, mostly.

Q. Did this complaining witness tell you this man went in the bathroom after he finished? A. Yes, sir.

Q. Did he take fingerprints in the bathroom? A. I don't recall. Maybe he did and maybe he didn't. I can't say.

MR. SEWELL: I have nothing further.

MR. CAPUTY: Nothing further.

THE COURT: You may step down.

ANGELO S. BONACCORSY

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

138 DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name and your assignment? A. Angelo S. Bonaccorsy, I am a detective assigned to the sex squad of the Metropolitan Police Department.

Q. And how long have you been so assigned? A. Five years.

Q. Did you assist, sir, in the investigation of an alleged rape to have taken place on August 15, 1961, at 1213 I Street, Northwest?

A. I did, sir.

Q. When did you come into the case? A. That morning, August 17 -- August 16, excuse me.

Q. I show you, sir, what has been marked for identification government's exhibit No.1 and 1-A for identification. I ask you to examine them and tell us whether you can identify them, this clothing.

A. Yes, I can.

Q. How do you identify it? A. It has my initials and the date marked on each piece of clothing.

139 Q. When was it that you first saw government's exhibit 1 and 1-A for identification? A. It was on the morning of the 16th.

Q. Where? A. At the sex squad office in police headquarters.

Q. How did you get them? Were they turned over to you?

A. Yes, by Det. Holden.

Q. I show you, sir, what has been marked as government's exhibit No. 3 for identification and ask you to examine the contents of the exhibit, and tell us whether you can identify them? A. Yes, sir.

Q. How do you identify the contents of government exhibit No. 3 for identification? A. My initials and also marked on each of these tickets and the date.

Q. Now, would you look at the respective tickets starting with the lowest number and tell us whether -- when and where it was that you first saw the respective stubs there, those tickets? A. Well, ticket marked 19 --

Q. What is that? A. That is --

140 MR. SEWELL: Just a moment. Your Honor, Det. Bonaccorsy is using his notes, I believe.

THE COURT: Are you using your notes?

THE WITNESS: I will for this.

THE COURT: Did you make them in the regular course of business on that occasion when you received the tickets?

THE WITNESS: Yes, sir.

BY MR. CAPUTY:

Q. Your memory is now exhausted? A. Yes.

Q. Now, look at the lowest number. What is the lowest number?

A. The lowest number is Section Q, row 4, No. 19.

Q. When was it that you first saw No. 19? A. That was on the 16th of August.

Q. Where? A. It was -- it came from Albert Frank Dowe who had gotten it from one Maxwell.

Q. No. You saw it on the 16th? A. Yes, sir.

Q. And where? A. At -- I received it from Albert Frank Dowe who is an employee at the Glass Distributors.

141 Q. Did he turn it over to you? A. Yes.

Q. And that was on August 16? A. Yes, sir.

Q. All right. Where was he at the time that he turned it over to you? A. He had -- in company with myself and Det. Clouse, we went to 5317 9th Street, Northwest.

Q. What is that? A. That is the home of Maxwell Washington.

Q. Where did you get ticket 19? A. Mr. Dowe went into the premises and brought the ticket out to me.

Q. Who was in the premises?

MR. SEWELL: I object to that.

BY MR. CAPUTY:

Q. Did you go inside? A. No, sir.

Q. Now, would you look at ticket No. 20 and tell us when you first saw that? A. No. 20, I saw on the 16th of August, also.

142 Q. Where? A. At the Glass Distributors.

Q. Under what circumstances? A. Albert Frank Dowe had seat number -- ticket corresponding to seat No. 20.

Q. Did he turn it over to you? A. Yes.

Q. Now, do you have a ticket there for seat 21? A. Yes, sir.

Q. Now, when was it that you first saw that part of government's exhibit No. 3, ticket for seat 21? A. That was about 9 a.m. on the 16th of August. Det. Holden turned this ticket over to me in the office of the sex squad.

Q. Do you have a ticket for seat 22? A. Yes, sir.

Q. When was it that you first saw ticket 22 for the first time?

A. That was also on the 16th of August.

Q. Where was it that you saw it? A. It was given to me by one Arthur Cox.

Q. Where at? A. That was at 317 K Street, Southeast.

143 Q. Now, what is the next ticket that you have? A. This is numbered seat 23 of section Q, row four.

Q. When was it that you first saw that ticket, seat 23? A. Again on August 16.

Q. Where? A. That was at the Glass Distributors Company and it was given to me by one John Wills, Sr.

Q. Do you have any other ticket? A. I have another ticket marked seat 24 of section Q, row 4.

Q. Where was it that you first saw that ticket for seat 24?

A. Also on August 16.

Q. Where? A. That was part -- at the home of one Elmer Jackson.

Q. Now, where have they been from that time to the time that you first saw them and the one that was turned over to you by Det. Holden, where have they been from that time to today? A. In the property clerk's office of the Metropolitan Police Department.

Q. I show you, sir, what has been marked as government exhibit No. 2 for identification. This is a shirt and I ask you to identify it --
143 examine it and tell us whether you can identify it? A. Yes, sir, I can identify this.

Q. When was it that you first saw government's exhibit 2 for identification? I will withdraw that, sir.

MR. CAPUTY: Better mark this as 2-A and 2-B for identification.

(government's exhibit Nos. 2-A and 2-B were marked for identification)

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as government exhibit No. 2-A for identification, a pair of trousers and government exhibit 2-B for identification, some shorts. I ask you to examine them and tell us whether you can identify them. A. Yes, I can.

Q. And how do you identify government exhibits 2-A and 2-B?

A. They have my initials and the date that my initials were put on them.

Q. When was it, sir that you first saw government's exhibit 2-A and 2-B for identification? A. It was on August 16 at about 1 p.m.

144 Q. Where? A. At the home of the defendant Charles Clemons.

Q. Now, were government's exhibits 2-A and 2-B for identification turned over to you by someone? A. Yes.

Q. By whom? A. Well -- Oh, I withdraw that. No, they were not turned over to me at that time.

Q. Did there come a time they were turned over to you? A. Yes.

Q. By whom? A. I don't recall the officer that turned them over to me at that time but later that day --

Q. Where did you first see them? A. I saw them first at the home of the defendant, two of these.

Q. Two of these. A. The shirt and the trousers.

Q. Were the shirt and the trousers turned over to you? A. Yes.

Q. By whom? A. That name slips my mind. If I may explain --

145 Q. I would like to know where you got them. A. After the defendant had been placed under arrest, we contacted Lt. Tate of our office and after a brief consultation with Lt. Tate, the defendant was asked if he would return to his home with us and put the clothes on that he had worn the previous night to the ball game.

He complied with this request. We returned him to his home and he put these clothes on.

Q. Did he wear government's exhibit 2 and 2-A the shirt and trousers? A. Yes, sir, he did.

Q. Did there come a time when those clothes were taken off of him and did he give them to someone? A. They were given by the defendant to -- I think Lt. Tate but I can't be certain, because I wasn't present at the time that the defendant took these clothes off.

Q. Don't you know to whom they were given? A. Off hand, I don't know.

Q. How about government's exhibit 2-B, the trousers -- the shorts, rather. A. That is the same. He took off all his clothes at the time and then turned them over to me.

146 Q. Did there come a time, sir, when government exhibits 2, 2-A and 2-B, were turned over to you? A. Yes.

Q. Do you recall by whom? A. No, sir.

Q. At the time they were turned over to you, can you tell us

whether you placed any marks on them? A. Yes, I put my initials and the date.

Q. Now, showing you, sir, what has been marked as government No. 5 for identification, a hat, I ask you to examine and tell us whether you can identify it? A. Yes, sir.

Q. How do you identify government's No. 5 for identification? A. It has my initials and the date.

Q. When was it that you first saw government's exhibit No. 5 for identification, the hat? A. It was at the home of the defendant.

Q. Was that turned over to you by someone, sir? A. Yes.

Q. By whom? A. I will say Lt. Tate but I am not positive at this time.

147 Q. Showing you, sir, government's exhibit No. 2-A for identification, and ask you if you had this turned over to someone else or had taken them somewhere? A. Yes.

Q. And where had you taken government's exhibit 1 and 1-A for identification? A. I took them to the Federal Bureau of Investigation.

Q. Now, directing your attention, sir, to government exhibit No. 2 for identification, this shirt, and government exhibit 2-A for identification, the trousers and government exhibit 2-B for identification, the pair of shorts. Can you tell us whether you had taken them anywhere? A. Yes, sir.

Q. Where? A. They also were taken to the Federal Bureau of Investigation.

Q. Do you recall when you took government exhibit 1 and 1-A and government exhibit 2 and 2-A and 2-B? A. The 28th of August, as I recall, sir.

Q. Now, did there come a time, sir, that government exhibits 1, 1-A and 2 and 2-A and 2-B were returned to you? A. Yes, sir.

148 Q. Do you recall when that was? A. Off hand I don't recall, sir, but it is in our records.

Q. Your records? A. Yes, sir.

Q. Would you refer to them? A. Yes. August 22.

Q. And did you go after them or where -- A. They were taken to police headquarters and I personally responded to the laboratory of the Federal Bureau of Investigation.

Q. Now, did you place the defendant Clemons under arrest?

A. Yes, sir.

Q. Sir, do you see that person here in the court room? A. Yes.

Q. Point him out. A. Seated over at that table with the short sleeved shirt on.

Q. Now, what time -- may the record show the identification?

THE COURT: Yes, sir.

BY MR. CAPUTY:

Q. What time was it that you placed him under arrest? A. It was about 1:30 p.m. on August 16.

149 Q. Where was it? A. It was at his home. Actually in front of his home address.

Q. Now, prior to the time that you placed him under arrest on August 16, 1961, had you talked to him prior to the time that you placed him under arrest? A. Yes, sir.

Q. Where was it you first talked to him? A. It was at the office of the Glass Distributors, Inc.

Q. Do you recall what time it was that you had gone to the office of the Glass Distributing Company? A. It was about ten-thirty or 10:45.

Q. Now, at that time, when you went down there, did you talk to other individuals there in addition to the defendant? A. Yes, sir.

Q. Now, specifically, did you have any conversation with this defendant concerning the baseball game? A. Yes, sir.

Q. Now, at the time you talked to the defendant at that company, had he at this time been placed under arrest? A. No, sir.

Q. Now, did you -- what, if anything, did you ask this defendant concerning the baseball game? A. Well, I asked him if he had attended 150 a baseball game the evening prior and he answered in the affirmative.

Q. That he had? A. That he had, yes, sir.

Q. Was any reference made by him concerning where he had sat on this particular evening? A. He was asked -- I personally asked him where he had sat and --

Q. What did he say? A. He answered yes, he did.

Q. Where did he say he sat? A. He told me he had sat with several other fellows in seat No. 21.

Q. Now, in seat No. 21, with reference to government's exhibit No. 3, is that where he told you he sat? A. Yes.

Q. Did you ask him anything about a stub for seat 21? A. Yes, sir, I did.

Q. What, if anything, did he say? A. At that time he thought he had it on his person and I asked him to -- I asked him to produce it and he made a search of his own person and failed to find this stub. Then I asked him if he knew where it was at.

151 Q. What did he say, if anything? A. He said it was not on his person and it was probably at his home.

Q. Then what happened? A. Then I asked him if he would like to call his home and if there was anyone at home to ascertain if this stub was at home because it was important to us to find this stub. He stated that he would like to call his home and he did call his home. He called from the place of the Glass Distributors. He then told me that his wife could not find this stub at home and I then asked the defendant if he would like to go home to look for this stub himself stressing the importance of this stub and he answered that he would like to go home and look for it.

I then asked him if he had an automobile and he answered no. I then asked him if he would like for us to drive him, give him a ride to his home to look for this stub and he answered yes again and we did.

We accompanied the defendant to his home and we were invited in to his home by the defendant.

We got into this apartment and he began to look for this stub and he looked on the dresser and he looked on the second dresser and then 152 he opened a closet door and went to portions of clothing that he

said he had worn that evening. The clothing he had worn to that particular ball game.

Of course, that was the shirt and it was hanging in his closet on a hanger.

Q. You are talking about government's exhibit No. 2, that shirt?

A. Yes. He went through the pockets of that shirt and then he took those trousers, also.

Q. You are referring to government's exhibit No. 2-A for identification? A. Yes, sir. They were also hanging on the hanger in this closet and he took the hanger down off the holder and searched in the pockets of those trousers but he still didn't find the ticket or the stub and he advised us that he couldn't find this stub.

I asked him where do you think it is at? Do you want to look some more and he said no, if it is not in these clothes, it isn't here. I probably lost it.

Q. When did you place him under arrest? A. Well, we went -- we left his apartment and went down to the front of his apartment where our car was parked and at that point he was placed under arrest.

153 Q. What time was this? A. This was about 1:30 or 1:45.

Q. And was there any other police officers with you when you left the Glass Distributing Company and went to the defendant's home and placed him under arrest? A. Yes.

Q. Who? A. Det. Clouse from the First Precinct.

MR. CAPUTY: No further questions.

THE COURT: Mr. Sewell, it is a quarter after four and unless you want to ask something special, we will recess at this time.

MR. SEWELL: I would like to wait, Your Honor.

THE COURT: Ladies and Gentlemen, we will recess until tomorrow morning at 9:45 in the jury room back of court room No. 11 with the same admonition, please.

(Whereupon, at 4:15 p.m., court recessed to reconvene at 10:00 a.m. the next day.)

154

Washington, D. C.,
February 20, 1962

* * * * *

156 THE COURT: All right, Gentlemen, you may proceed.

MR. CAPUTY: If Your Honor please, since the cross-examination has not started, may I ask him a few more questions?

THE COURT: Yes, sir.

ANGELO S. BONACCORSY

was recalled to the stand, previously sworn, was examined further as follows:

DIRECT EXAMINATION (cont'd)

BY MR. CAPUTY:

Q. Now, Det. Bonaccorsy, at the premises 1213 I Street, Northwest, did you do anything with the rug there? A. Yes, sir.

Q. And what, if anything, did you do? A. I picked some samples of the fiber from that rug.

Q. And what, if anything, did you do with the samples from the fiber of the rug? A. They were also submitted to the Federal Bureau of Investigation for comparison purposes.

MR. CAPUTY: May I have this marked as Government Exhibit No. 7?

157

(Government Exhibit No. 7 marked for identification).

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as Government Exhibit No. 7 for identification, a small envelope and I will ask you to examine it and tell us whether you can identify it and the contents. Would you open that up and see what it is? A. The envelope I can identify now.

Q. You can? A. Yes, sir.

Q. How do you identify it? A. It has my initials and the date that I put them on this envelope.

Q. Now, what, if anything, did you put in that envelope marked as Government Exhibit 7? A. The samples of the fiber that I took from the rug on the floor of 1213 I Street, Northwest.

Q. How did you take those samples? A. By hand. I picked them out of the rug and inside of the envelope are those fibers.

Q. To whom did you turn them over to? A. The Federal Bureau of Investigation.

Q. Now, at the time you turned them over to the Federal Bureau of Investigation -- is that the lab? A. Yes.

158 Q. Did you turn this article over with the others at the same time?

A. Yes, sir.

Q. Did there come a time then that this was returned or picked up by you or called for? A. Yes, sir, I picked it up.

Q. When did you call for it? A. The 22d of August.

Q. Is that the same time as the others? A. Yes, sir.

MR. CAPUTY: Nothing further.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Det. Bonaccorsy, before we started -- yesterday you read from some notes in a note book? A. Yes, sir.

Q. About the seats at the ball game? A. Yes, sir.

Q. Now, just prior to your taking the stand, didn't you have a conversation with the -- with Cox in the witness room about the numbers?

159 A. No, sir, that is not true.

Q. Did you have a conversation with Cox about the numbers?

A. No, sir.

Q. You deny that?

THE COURT: He has denied it, sir.

BY MR. SEWELL:

Q. When did you record those numbers? A. On August 16.

Q. Is there any notation in the notebook to indicate that you recorded them on that date? A. Yes, there is a date in the notebook.

Q. Let's see it. A. Yes.

(Mr. Sewell looking in notebook).

Q. Now, Officer, I am looking at JAMES WILLS, Charles Clemons -- the 24 was scratched over, is that correct? A. It appears that way, yes.

Q. When did you do that? A. On that same date, August 16.

Q. Who gave you the -- the 24 in the first place, Charles Clemons?

A. No one did.

160 Q. Why did you put it down in the book, 24, if nobody gave it to you?

A. Well, it was an error on my part. It was given to me as 21 and I wrote it down as 24 and I scratched through the four and made a one out of it.

Q. Who gave it to you as 21? A. You mean the ticket itself?

Q. Did you write these down before you got the stubs? A. No, I wrote some of the numbers as I got them and others were written as -- before I got them.

Q. Did you write Charles Clemons name down before you saw Charles Clemons? A. Perhaps I did, yes.

Q. And then you wrote the 24 down? A. Yes.

Q. Who told you Charles Clemons name? A. Mr. Bouchard at one time told me his name.

Q. Who told you first? A. I believe it was Mr. Wills.

Q. Mr. Wills told you he was in seat 24, isn't that right? A. No, sir.

161 Q. Where did he tell you he was seated? A. At that time he told me he wasn't sure and he deliberated for a few minutes and then told me that he thought Clemons was in seat 21.

Q. You put down 24? A. Yes, sir.

Q. And Arthur Cox, you have him in 21, didn't you? A. Yes.

Q. And who told you he was in 21? A. Well, apparently Mr. Wills because I spoke to him first.

Q. When you arrived at the Glass Distributors on the 16th, there were two workers there, Wills and Cox, didn't you talk with the two of them? A. There were three there.

Q. Who else was there? A. The defendant Clemons.

Q. Well, now, Officer, wasn't Clemons out making a delivery?

A. No, Clemons was there. A gentleman by the name of Dowe was out.

Q. You testified yesterday, Officer, that Clemons told you he was in seat 21? A. Yes, sir.

162 Q. Now, do you recall testifying in this case on September 1, 1961, at a preliminary hearing? A. I don't recall the actual date, sir, but I recall testifying in the Municipal Court.

Q. And at that time and in telling your story, do you recall having said, while there at the Glass Distributors we interviewed each employee who attended the baseball game and with these particular tickets we recovered all but one ticket and it was seat No. 21.

MR. CAPUTY: For the record, he should have the date and the page.

MR. SEWELL: Page 6 and 7 of the original transcript.

MR. CAPUTY: He should have the question asked and the answer, if Your Honor please.

BY MR. SEWELL:

Q. "Would you like to tell us the results of that interview." This is by the United States Attorney. "Yes."

"Officer, did you have occasion to interview the complainant?

"Yes, sir.

"Would you tell us the results of that interview?

163 "Yes, sir."

This is part of his telling of the interview on page 6 and on page seven you said this: "From the other five, we ascertained that seat 21 was occupied by Charles Clemons."

Do you recall saying that, sir? A. I don't recall but if it is there, perhaps I said it.

Q. All right, sir. Now, Officer, who told you that Clemons was seated in 21? A. With the exception of Mr. Jackson, who was not interviewed by myself, each of the others put the defendant in seat 21.

Q. Now, that is not quite correct. Did you interview Maxwell Washington? A. No. There were two I did not interview.

Q. Did Maxwell Washington tell you he was seated in seat 21?

A. I never spoke to Mr. Jackson.

Q. Washington. A. Washington.

Q. When you sent to pick up his ticket, why didn't you go in and get it from him? A. Because I don't think he was at home but Mr. Dowe was

a friend or relative of his and he felt that it would be better for him to go in.

164 Q. Who felt that? A. Mr. Dowe.

Q. You didn't think Mr. Washington was home? A. I don't think he was.

Q. Do you know whether Mr. Dowe actually got the ticket from the house or whether he had it on him all the time? A. No, I don't. I had to go by what he told me.

Q. Well, you personally picked up the tickets from everybody else, didn't you? A. From Wills and from Cox and from Dowe.

Q. Now, Officer Bonaccorsy, you said yesterday that you took Clemons home to look for his ticket. Is that right? A. Yes, sir.

Q. What time was this? A. I believe it was about -- when we left the Glass Distributors it was in the vicinity of 12:15 p.m.

Q. At that time, Officer Bonaccorsy, how many tickets did you have in your possession? A. At that time in my immediate possession, I had Mr. Wills' ticket, and, of course, the ticket corresponding to seat 21 was in our possession but I didn't have it on my person.

Q. So you only had two of the stubs in your possession? A. Yes.

165 Q. And how about Cox's ticket? A. Cox was not -- we had to pick up his tickets from his home.

Q. So you testified yesterday that you arrested Clemons at his home, is that right? A. In the front of his home.

Q. At that time, Officer, you did not know, did you, or did you know, whether you were going to get the other stubs? A. Yes, I knew I could get them at that time.

Q. How did you know? A. Because I had been told by each of the individuals that their tickets were at home or on their person.

Q. You had not talked with Elmer Jackson? A. No.

Q. And he had the stub for seat 24. How did you know you were going to get that one? A. We called the home of Mr. Jackson and spoke to his wife.

Q. What time was this? A. I don't recall the time of the call that we made it to her.

166 Q. How did you know you were going to get Maxwell Washington's stub? A. Pardon?

Q. How did you know you were going to pick up Maxwell Washington's stub? A. Because Mr. Dowe made those arrangements for us. He called or somehow got in contact with Mr. Washington's home and ascertained that the stub was there.

Q. And when was this? A. This was on the 16th.

Q. Before you took Clemons home? A. No, I think it was after we took Clemons home.

Q. After you arrested him? A. Yes, I think it was after.

Q. So at the time you arrested Clemons, you were not sure whether the other people could account for their stubs or not, isn't that correct? A. That is true for a couple of them.

Q. Now, Officer Bonaccorsy, when Clemons asked you at the Glass Distributors what is all of this about, what did you say to him? A. I told him that there had been some trouble in the evening prior involving a

167 woman and it stemmed from this group of people attending a ball game and we were very anxious to locate the rain check portion of that baseball ticket.

Q. Did you actually tell him you had a little trouble at the ball park? A. I told him we had trouble that originated at the ball park.

Q. Did that originate there? A. Well, the tickets originated at the ball park.

Q. But the trouble didn't? A. No.

Q. Now, when did you first mention to him -- mention to the defendant something about a woman being attacked? A. In route to his home to locate this stub.

Q. Wasn't it actually, Det. Bonaccorsy, after you left his home on the way to 15th and H? A. No, sir.

Q. Did you stop at 15th and H after you left his home? A. Yes, sir.

Q. What did you stop there for? A. We had contacted Lt. Tate by radio and asked that he meet us at a convenient location for him and 15th and H, Northeast was the most convenient location.

168 Q. When did you contact Lt. Tate? Was it before or after you arrested Clemons? A. After.

Q. And that was outside of his house? A. Yes, sir.

Q. And I believe he lived at 18 and H, Northeast, didn't he? A. I believe it was 1810.

Q. Where was Lt. Tate? A. He was cruising in a cruiser in the street.

Q. And when you met him at 15th and H, what happened? A. We brought him up to date as to what had happened up to that point.

Q. Now, was he in your squad car or you in his? A. I got out of mine and got into Lt. Tate's and then the two of us went back to mine.

Q. And didn't Lt. Tate have a conversation with the defendant Clemons? A. Yes, sir.

Q. What was that conversation, if you heard it? A. Well, he asked Clemons if he was the man that had assaulted this woman and raped her and the defendant denied it and then Lt. Tate said something like, if you 169 are not involved or implicated in any way, would you object to going back to your home and putting on some clothes and standing in a line-up to let this lady look at you.

Q. Did he protest or readily say he would do it? A. He readily said -- complied.

Q. Now, he didn't ask him to go put on some clothes. He said would you put on the clothes that you wore to the ball game? A. That is correct.

Q. Did you hear Lt. Tate also tell him you are not under arrest and you can get out of this car and walk away? A. No, sir, I did not hear that.

Q. Did you tell Lt. Tate you had placed this man under arrest?

A. Yes, sir.

Q. And yesterday, Officer, you were having trouble determining who gave you this shirt and these trousers. A. That's right.

Q. Do you recall now? A. Det. Sgt. Kline from the Sex Squad.

Q. Well, of course, Clemons didn't give them to you, did he?

170 A. No, sir, not to me.

Q. He didn't give them to anybody, did he? He was told to take his clothes off and put on jail clothes, is that correct? A. No, that is not correct.

Q. Well, now, did you --

THE COURT: Were you there when the clothes were taken?

THE WITNESS: No, sir, I was not.

BY MR. SEWELL:

Q. Did he take some other clothes down there with him? A. No, sir.

Q. Did you know if they were taken in the central cell block or over at the D. C. Jail? A. The clothes that he checked in --

Q. These clothes here. A. No, he had those clothes on.

Q. I see. What did he put on when they were given to you? A. I don't know. I wasn't there at that time.

Q. Now, Officer, do you know a man named Wills, Jr.? A. No, sir, I don't.

Q. You don't know a man named James Wills, Jr.? A. I don't know him.

171 Q. Did you ever have a conversation with him? A. As best I can recall, no.

Q. Well, let me refresh your recollection, if I may; a man who represents himself to be James Wills, Jr. came to your office and talked with you on the 16th or the 17th of August and asked you, are you sure you got the right man? A. No, sir, I don't recall that.

Q. You don't recall that? A. No, sir.

Q. Did you hear that anybody came in to the sex squad office and had that conversation? A. No, sir.

Q. You were in charge of the investigation in this case, weren't you? A. Well, I am not in charge of it. I worked on this investigation.

Q. Do you recall testifying in this case on September 1? A. Is that the date, sir?

Q. September 1, 1961. A. Yes, sir.

172 Q. The U. S. Attorney asked you this question: Were you in charge of the investigation? That is page four and your response was, yes.

A. Well, technically that is true. I was in charge of it at that time but I have superiors that I have to answer to and they technically are in charge of any sex case that comes in and each man is given an assignment and he is in charge of that particular phase of it and that is what I meant when I said I was in charge of it.

Q. What phase were you in charge of? A. Well, I started out that morning and interviewed these people and recovered the tickets and arrested the defendant and took him to court for the preliminary hearing, sent clothes to the FBI and the rug fibers to the FBI.

Q. Now, Officer Bonaccorsy, what type of rug is that over there on that floor? A. I don't know what type it is.

Q. Well, is it hard or soft? A. Well, I guess -- I don't know if you would classify it as hard or soft rug now.

Q. Well, is it cotton or wool? Do you know anything at all about rugs? A. No.

173 Q. I understand you went over there and picked it up with your hands? A. I was down on the floor and I pulled these fibers from this

rug.

Q. Then the rug had stringy fibers, is that right? A. No.

Q. What type of fibers? A. Tight.

Q. In knots? A. No, I don't think they were in knots.

Q. Is this, Government 7, what you got out of the rug? A. Yes, sir.

Q. You pulled that out with your hands? A. Yes, sir.

Q. Now, sir --

MR. CAPUTY: Your Honor, may I suggest we keep these together?

BY MR. SEWELL:

Q. Now, when did you pick these out? A. On the 16th of August.

Q. What time? A. I would say about 9:45.

Q. What time did you go to the ball park? A. About 10:15 I think it was.

174 Q. Now, tell us, Officer Bonaccorsy, what you did after you received these exhibits here at nine o'clock, what did you do?

THE COURT: I didn't hear that.

BY MR. SEWELL:

Q. Government 1, 1-A, 2 and 2-A, and these things from the stubs -- the stubs, what did you do?

THE COURT: You said nine o'clock?

MR. SEWELL: He said he received them at nine o'clock.

THE WITNESS: Yes, sir.

BY MR. SEWELL:

Q. You told us yesterday that you received the ticket for seat 21, this exhibit? A. Yes.

Q. At nine o'clock? A. Yes, sir.

Q. What did you do then? A. With those?

Q. What did you do after you received them? A. I marked them with my initials and the date and I wrapped them in brown paper and secured them and placed them in a locked closet.

175 Q. Did you do this at headquarters before you went to 1213 I Street, is that right? A. Yes, sir.

Q. And how long did it take you to do that? A. Oh, maybe fifteen minutes.

Q. Did you leave immediately for 1213 I Street? A. Yes, sir.

Q. When you got there, what did you do? A. I interviewed the complaining witness.

Q. When you left there, where did you go? A. I went to the stadium.

Q. Did you take the complaining witness with you? A. To the Stadium?

Q. Yes. A. No, sir.

Q. Was she present when you did anything at that apartment?

THE COURT: Where is this?

MR. SEWELL: 1213 I Street.

THE WITNESS: I interviewed the complaining witness and I made

176 a brief survey of the premises so that I could picture the crime in my own mind because I was not there originally at the time this thing happened and then during that time I took these samples from the rug.

BY MR. SEWELL:

Q. Was anybody present when you did that? A. Well, Mrs. Waters was in the apartment but whether she was along side of me when I took the fibers, I don't know. I believe she was seated in her front office.

Q. Where was Det. Clouse? A. He was with me.

Q. You had these samples with you when you went to Glass Distributors? A. Yes.

Q. When you went to the ball park? A. Yes.

Q. When you first had possession of Clemons' trousers, did you see anything on the trousers that looked like anything from that rug?

A. I didn't inspect them that closely, sir.

Q. Now, Officer, when we get to the line-up, after he went home and dressed you took him to the line-up, is that right? A. Yes, sir.

Q. Do you know the names of the people that were in that line-up?

177 A. I would have to look at our records to give you those names.

Q. Do you have it with you? A. Yes, sir.

MR. SEWELL: May he look at the records, Your Honor?

THE COURT: Yes, if you want him to.

Is this the line-up on the 16th, Mr. Sewell?

MR. SEWELL: Yes, sir.

THE COURT: Do you want him to read the names?

MR. SEWELL: Would you read the names, please?

THE WITNESS: In the first position going from left to right was a gentleman by the name of Milton Taylor.

BY MR. SEWELL:

Q. Is that a police officer? A. He is a police officer.

Q. On the Juvenile Squad? A. That is correct, Youth Division.

No. 2 position was the defendant, Charles Clemons and in the third position was a fellow Phillip Coley who is a negro, 22 years of age and in the

fourth position was Claude Peek who is a negro, 35 years of age.

178 Q. Now, one police officer in that line-up? A. Yes, sir.

Q. Now, tell us, Officer, which one of them -- which one of these four persons was it that Mrs. Waters said, I know him? A. I believe it was the gentleman in the fourth position, Claude Peek. I cannot be certain but I believe it was the man to the extreme right.

Q. Told you the man that attacked her was 35 years of age?

A. Her original report was it was a negro about 35 years of age.

Q. And how tall was Peek? A. Peek is about five-nine.

Q. She stated the man was about five-eight, didn't she? A. Yes.

Q. And how much did he weigh? A. Peek?

Q. Yes, sir. A. Well, I would have to estimate that. I will say he weighed about 145 of 170 pounds.

Q. She said the man weighed about a 160 to 180 pounds? A. Yes, sir.

179 Q. This man fit the description she gave to the police, didn't it, officer? A. The physical description.

Q. Well, now, Officer, did she tell you or did you ask her or anyone in your presence ask her, how she knew this man? A. Yes, she was asked that question.

Q. And was that in your presence? A. Are you talking about Peek?

Q. Yes. A. Yes, sir, in my presence.

Q. What did she say? A. This particular gentleman had been to her employment agency and she had secured work for him and I believe that was how she knew him.

Q. Did she say you caught him peeking in her window? A. No, sir, she didn't say that.

Q. Now, Officer, when you went to the home of Clemons on the 16th of August, Officer Clouse went out to the car with him and you stayed back and talked to his wife, didn't you? A. Yes, I did.

Q. You were trying to ascertain what time he arrived home the night before? A. Yes, sir.

180 Q. What did she tell you? A. She said that she would approximate the time between 12:30 and one o'clock.

Q. Is that what she told you? A. Yes.

Q. You didn't write it down, did you? A. I may have. If I may look at my notebook, Judge --

Q. Yes, sir.

THE COURT: Yes, you may look at your notebook.

THE WITNESS: No, I didn't write it down.

BY MR. SEWELL:

Q. Officer Bonaccorsy, what time did these people, Cox, Wills and Dowe, tell you the game was over? A. Oh, I believe they said it was over around ten-fifteen or ten-thirty.

Q. Well, what time did the complaining witness tell you that the attack occurred? A. Well, she alleges that she returned home about 11:30 p.m. on the night of the 15th and she had been in her apartment maybe fifteen minutes to 20 minutes when she was grabbed. I would approximate the time of the offense at 11:45.

Q. Did she tell you that? A. She told me that she arrived home about 11:30 and that she was in there maybe fifteen minutes.

181 Q. Officer Bonaccorsy, on September 1, 1961, on page five of the official transcript, "would you tell us the results of your interview with the complaint?" "Yes, sir."

"You say my interview with the complaining witness, she related to me in the early evening hours of August 15, she had been to the National Theater and she returned home about 11 p.m. She went to the rear kitchen where she prepared a sandwich for herself, changed her clothes and put on a nightgown and returned to the front room of her apartment and was grabbed by an unknown person."

Now, did she tell you it occurred -- did she tell you she got home at 11:00 o'clock? A. As I recall, sir, she told me that she arrived home about 11:30.

Q. Officer Bonaccorsy, the interview you had with her, did you write it down -- was it in affidavit form? A. No.

Q. Did you write it down anywhere? A. No.

Q. Did she sign a statement? A. Yes.

182

Q. For you? A. No.

Q. Who for? A. She went to the office and gave a statement.

Q. Who did she give it to? A. Well, again I would have to see which of our police women took this statement.

Q. Is this police woman here today to testify in this case? A. I don't believe so. I don't know which one it was.

Q. Officer Bonaccorsy, did you investigate a man named Miller who works for Glass Distributors in connection with this case? A. No, sir.

Q. You did not? A. No, sir.

Q. Were you given his name by anyone? A. Miller?

Q. Yes, sir, Miller who works for Glass Distributors. Were you given his name by anyone? A. I may have been but I don't recall.

183

Q. Do you have any recollection who gave you his name? A. No.

Q. You don't remember James Wills, Jr.? A. No.

MR. SEWELL: I think that is all, Your Honor.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Det. Bonaccorsy, do you know the Det. Joyce Plath? A. Yes, sir.

Q. The statement that was given by Meta Waters, did you see that written statement? A. Yes, I have seen it since then.

Q. And did you see Meta Waters sign the statement?

MR. SEWELL: I object, Your Honor.

MR. CAPUTY: I am asking. I don't know if he did or not.

MR. SEWELL: He said he didn't know who took the statement.

THE COURT: I think it is a perfectly proper question. Did you see her sign a statement, sir?

THE WITNESS: No. I don't recall having seen her sign it.

184

BY MR. CAPUTY:

Q. Did you see a copy of a statement with the name Meta Waters?

A. Yes, sir.

Q. On it? A. Yes, sir.

MR. CAPUTY: May I have this marked, Your Honor.

THE COURT: Yes, sir.

(Government's Exhibit No. 8 was marked for identification).

BY MR. CAPUTY:

Q. Where is Joyce Plath now? A. She is on annual leave, sir.

Q. Is she in town? A. She was. I had her as a witness at the start of the trial.

Q. Is she available? A. I don't think so, sir.

Q. I show you, sir, what has been marked as Government's Exhibit No. 8 for identification which is a one page statement. I ask you to examine it and tell us whether you have seen it, a statement similar to this with the name of Meta Waters on it, signed on it? A. Yes, sir, I have seen a statement similar to this.

Q. With the name Meta Waters? A. Yes, sir.

MR. CAPUTY: Subject to objection, Your Honor, I will offer this statement, Government Exhibit No. 8.

MR. SEWELL: I will object. May I ask a question?

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. SEWELL:

Q. Now, Officer, you didn't read this statement? A. Did I read it?

Q. I mean, you didn't read it just then? A. No.

Q. How can you tell this is a statement similar to the one you saw if you didn't read it? A. Well, we make these up in -- well I originally saw five copies. I assume that is one of the five.

Q. How do you know? A. Well, I brought a copy --

MR. CAPUTY: We are not contending it is the original. He said one similar to it.

THE COURT: Does this statement appear to be similar to the one which was signed by her?

186 (Witness reading statement).

THE WITNESS: Yes, sir.

THE COURT: Do you object to it being received in evidence?

MR. SEWELL: Yes, sir.

THE COURT: All right. Move to something else, Mr. Caputy.

[FURTHER REDIRECT EXAMINATION]

BY MR. CAPUTY:

Q. Now, at the line-up, was any identification made by the complaining witness Meta Waters of anybody in that line-up? A. No, sir.

Q. All right. Now, at a prior time -- prior to the time that Meta Waters saw the line-up, was any statement made by Meta Waters as to whether she would be able to identify anybody?

MR. SEWELL: I object to this, Your Honor. She described the person.

THE COURT: Ladies and Gentlemen, you have heard the evidence. Did she make a statement?

THE WITNESS: Yes, sir.

BY MR. CAPUTY:

Q. What did she tell you? A. That she would not be able to identify anybody because she never saw him, his face.

Q. Was that made prior to the time she viewed the line-up?

A. Yes, sir, it was.

Q. Now, one of the first questions you were asked by counsel today, whether you made any change in whatever notes you have there of a number in the presence of Cox. Did you make a change? A. No, sir, I made no change in this notebook since the day of the investigation.

Q. Now, sir, you were asked another question by counsel: If Mr. Wills, Jr. did not come to see you on August 16 or 17th and ask you if you were sure you had the right man or not.

Was any such statement by anybody made to you, sir? A. No, sir, not to my knowledge.

Q. Was any such statement made? A. Would you repeat that?

Q. You were asked on cross-examination by counsel: If it was not a fact that Mr. Wills, Jr., did not see you on August 16 or 17th and

ask you in connection with this case, are you sure you got the right man.

188 That is the question you were asked by counsel. A. I will have to say no because I do not recall speaking to John Willis, Jr.

Q. Was that statement made to you by anybody, sir? A. No, sir.

Q. And you say Sgt. Kline gave you the clothes? A. Yes, sir.

Q. Now, after the clothes were given to you by Sgt. Kline, did you have occasion to see the defendant Clemons? A. Not until arraignment in the Municipal Court.

Q. When was the arraignment in the Municipal Court?

THE COURT: This is public record, sir, do you know?

MR. SEWELL: September 1.

MR. CAPUTY: What time?

MR. SEWELL: Well --

THE WITNESS: That is on August 17 of 1961, and at that time the case was continued.

BY MR. CAPUTY:

Q. What kind of clothes was he wearing then? A. No, sir, I don't have that.

Q. You don't recall? A. No.

MR. CAPUTY: I have nothing further, Your Honor.

189 RECROSS EXAMINATION (Cont'd)

BY MR. SEWELL:

Q. Sir, the notebook -- Your Honor, may I see a page in his notebook here? The dates marked here, Officer. The seat numbers.

A. Yes, sir.

Q. Where the people were sitting. A. Yes, sir.

MR. SEWELL: Your Honor, I would like to have this marked for identification.

THE COURT: You may mark it certainly.

(Defendant's Exhibit No. 1 was marked for identification).

MR. SEWELL: This refers to a page of this notebook.

Nothing more, Your Honor.

MR. CAPUTY: Is that statement being offered into evidence? I have not seen it.

MR. SEWELL: At the proper time.

THE COURT: You have no objection?

MR. CAPUTY: No.

THE COURT: Anything further of this witness?

MR. CAPUTY: Nothing.

THE COURT: You may step down, sir.

190 MAXWELL WASHINGTON

was called to the stand on behalf of the Government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name, sir? A. Maxwell Washington.

Q. Where do you live, Mr. Washington? A. 5317 9th Street, Northwest.

Q. Where do you work, sir? A. Canada Dry as of yesterday.

Q. Canada Dry? A. Yes, sir, Silver Springs.

Q. Do you know Charles Clemons? A. Seen him once.

Q. Do you see this person Charles Clemons in court today?

A. Yes, sir.

Q. Point him out. A. There.

Q. How is he dressed? A. Shirt sleeves.

MR. CAPUTY: May the record reflect he has identified the defendant?

191 THE COURT: Does he have a coat on?

THE WITNESS: No.

THE COURT: All right.

BY MR. CAPUTY:

Q. Now, directing your attention to August 15, 1961, can you tell us whether you had gone to a ball game? A. Yes, sir, I did.

Q. And the ball game where? A. Griffith Stadium.

Q. Did you go to that ball game alone or with someone? A. I met

some other guys at the ball park.

Q. Now, do you recall what seat you sat in at the ball park?

A. Yes, these seats were set up in a row. I know where I was sitting but I don't know the number.

Q. Who were you next to? A. My cousin, Dowe.

Q. What seat was he in? A. 20.

Q. Do you know what seat the defendant Clemons was seated in?

A. Clemons was sitting to my cousin's left and I was sitting to his right.

192 Q. Well, your cousin was in 20? A. Yes.

Q. Now, think back. What seat number were you in? A. It must have been 19.

Q. Was it 19? A. Yes.

Q. And your cousin was in 20? A. Yes.

Q. What seat was Clemons in? A. I don't know how the seats run. Clemons was to his left.

Q. Your cousin to the left of you? A. How is that?

Q. Was your cousin to the left of you? A. Yes.

Q. You were in 19? A. Yes.

Q. Your cousin was in 20? A. Yes.

Q. Now, in relation to your cousin, was Clemons to the left or to the right of your cousin? A. To the left.

193 Q. What seat was that? A. It must have been 21.

Q. What? A. 21.

Q. Did there come a time that you left the ball park? A. Yes.

Q. About what time? A. Well, it must have been between ten-thirty or eleven o'clock.

Q. Now, was the defendant Clemons there at the ball game when it was over? A. Yes.

Q. Did he leave with you? A. No. We came out together but we scattered through the crowd coming down the ramp.

Q. Now, what, if anything, did you do with the rain check of the seat that you had? A. Got it at home.

Q. What happened to that rain check? A. When I came home the next evening, my wife told me that the detectives -- the Marshal, whoever it was, and my cousin came up and wanted the rain check and she gave it to them.

194 THE COURT: Who is your cousin?

THE WITNESS: Albert Dowe.

BY MR. CAPUTY:

Q. Showing you, sir, part of Government's Exhibit No. 3 for identification, a rain check bearing seat No. 19, is that like the rain check that you had on August 15 that you left at your address at home? A. Yes.

MR. SEWELL: I object, Your Honor. All of them look like the one he had.

MR. CAPUTY: He can answer that.

THE COURT: You can argue that to the jury, sir.

Does that look like it?

THE WITNESS: Yes, it do.

MR. CAPUTY: I have nothing further of this witness.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Washington, do you remember me? A. Yes.

Q. Didn't you tell me out in the hall you sat in Q-21? A. Like I said, I don't know exactly how those seats are lined up.

Q. Didn't you tell me that you were in 21? A. Yes, sir, I told you I was in 21.

195 MR. SEWELL: That is all I have.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. What seat were you in? A. I was to the right. I don't know how these seats run. If the seats gets lower going to the left or they get higher going to the left and if they do I was in 19.

Q. Your cousin Dowe was to your left? A. He was to my left.

MR. CAPUTY: That's all.

THE COURT: You may step down.

JAMES H. JONES

was called to the stand on behalf of the Government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name and assignment? A. James H. Jones, assigned to the Bureau of Criminal Identification, Washington, D.C.

Q. And how long have you been assigned to the Identification Bureau of the Metropolitan Police Department? A. A little over seven years, sir.

196 Q. What do your duties consist of as a member of the Identification Bureau of the Metropolitan Police Department? A. Well, fingerprint technician, photographs, all types of physical evidence.

Q. During the course of your duties, sir, as a member of the Identification Bureau of the Metropolitan Police Department, did there come a time that you went to 1213 I Street, Northwest, in the District of Columbia? A. There did, sir.

Q. Do you recall what day it was that you had gone to 1213 I Street, Northwest, in the District of Columbia? A. On August 16, 1961.

Q. Now, what, if anything, did you do in the premises at 1213 I Street, Northwest, in the District of Columbia? A. I photographed the entire premises of the first floor, the outside and checked the premises for latent fingerprints.

Q. Now, in addition to that, can you tell us whether you took a photograph of any individual, sir? A. Any individual?

Q. Yes. A. To my recollection, I did not.

197 Q. Later on that day did there come a time that you photographed a person? Let me show you what has been marked as Government's Exhibit No. Six for identification. Would you examine that and tell us whether you can identify that photograph? A. No, sir, I did not take this photograph.

Q. Do you know who took that? A. No, sir, I don't.

Q. Now, did you take any photograph of the premises? A. Yes, sir, I did.

Q. Did you take any of the rugs? A. I believe I did, Mr. Caputy. There was a number taken.

Q. Did you find any latent prints in the premises? A. No, sir.

Q. What do you mean, no, sir? Were there prints that were unidentifiable or didn't you find any prints at all?

MR. SEWELL: I object.

MR. CAPUTY: I will withdraw the question.

THE COURT: What do you mean by latent prints, sir?

THE WITNESS: Latent fingerprints, Your Honor, prints that are not visible to the naked eye and through technical procedures you develop where they are visible to the eye of the individual.

198 THE COURT: Did you find any such prints on the premises?

THE WITNESS: No, sir, I did not.

MR. CAPUTY: I have nothing further.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Did you dust the bathroom for prints, Officer Jones? A. Yes, sir.

Q. Was there a window in there? A. Yes, sir.

Q. Did you dust the window for prints? A. Yes, sir.

Q. You found none? A. Right.

Q. Did you dust the rug? Can you take fingerprints off a rug?

A. No, sir.

Q. You can't do it? A. No, sir.

Q. What time were you there on the 16th? A. Shortly after midnight, Mr. Sewell.

Q. That night? A. Yes, sir.

199 Q. You found no identifiable fingerprints no where in the place?

A. That is correct.

Q. Did Mrs. Waters point out everywhere the attacker had been in the house? A. I did not see any -- I did not see the occupant of the residence there.

Q. Very well. Who directed you where to dust for prints? A. Det. Holden from the Sex Squad was present and to the best of my memory, I took my instructions from him.

Q. Officer Jones, I show you what has been marked Government Exhibit No. 3. Was this ticket Q-21 ever given to you for prints?

A. Yes, sir, this ticket I recovered myself.

Q. You did? A. Yes, sir.

Q. Where? A. From the front steps of the premise at 1213 I Street, Northwest.

Q. What did you do with it? A. I turned it over to a detective later on in my office.

200 Q. You couldn't be mistaken about recovering that ticket? A. No, sir.

Q. You recovered that ticket? A. Yes, sir.

Q. On the front steps? A. Yes, sir.

THE COURT: Did you mark that, Officer?

THE WITNESS: No, sir, I did not, Your Honor.

BY MR. SEWELL:

Q. You recovered that on the front steps? A. No, I say a ticket like this. I wouldn't say this was the ticket.

Q. But no ticket like this was given to you to be dusted for prints, is that correct? A. I recovered a ticket like that myself.

Q. Did you dust it for prints? A. No, I did not process it for prints, sir.

Q. Do you know the name of the detective you gave it to? A. I don't remember off-hand.

Q. And you don't know what he did with it? A. I don't quite understand your question, Mr. Sewell.

201 Q. You said you gave it to a detective in your office? A. No, I gave it to a detective working on the case. I don't remember whether it was from No. 1 or the Sex Squad, either one of them.

Q. Now, you remember Det. Holden because he directed you where to dust? A. Yes.

Q. Did you give it to him? A. I don't remember, sir.
Q. Do you know Detective Bias? A. Yes, sir, I do know him.
Q. Did you see him up there? A. Yes, sir, I did.
Q. Did you give it to him? A. I don't remember, sir.
MR. SEWELL: I have nothing further.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Did you say you recovered this ticket 21 yourself? A. That ticket or one like it.

Q. You recovered it where? A. From the front steps of the premises 1213 I Street.

Q. You mean outside? A. That's right.

202 Q. On the front steps? A. That's right.

Q. And you gave it to a detective? A. That's right.

MR. CAPUTY: Bring in Det. Holden and Bias into the court room.

THE COURT: I have been informed that neither one is here.

We will take our morning recess and you may see if you can get them.

Ladies and Gentlemen, we will recess for ten minutes with the same admonition, please.

(Whereupon, a short recess was taken).

JAMES H. JONES

resumed the stand, previously sworn, testified further as follows:

REDIRECT EXAMINATION (Cont'd)

BY MR. CAPUTY:

Q. What time was it that you were at 1213 I Street, Northwest, on August 16? A. Shortly after mid-night.

Q. All right. You say you recovered this outside, ticket 21?
203 A. A ticket like that.

Q. Like that? A. Yes, sir.

Q. Now, when you recovered this, you say outside, was anybody outside in addition to you? A. Yes, sir.

Q. Who was there? A. Well, I could never tell you how many. There were ten or maybe fifteen or 20 police officers.

Q. In addition to the police officers, can you tell me whether there was any member of the Canine Corps there at the time? A. Yes, sir, there was.

Q. Was a member of the Canine Corps around the front steps?

A. Yes, sir, there was.

Q. Now, at the time the member of the Canine Corps was there, did you see that Canine Corps member do anything? A. Yes, sir.

Q. What did you see? A. Well, when I got out of my cruiser, the first thing I saw was a dog on the front steps with a ticket similar to this in his mouth.

204 Q. Then what happened? A. The trainer took the ticket out of the dog's mouth and laid it on the steps and someone suggested that I recover -- check it for fingerprints and I picked it up and put it in my kit.

Q. Do you know Det. Holden by sight? A. Yes, sir, I do.

Q. Now, can you tell me whether Det. Holden was there on the front steps at this time when a member of the Canine Corps was there? A. I believe he was, sir.

Q. You are not certain? A. To the best of my recollection he was the first man I saw when I arrived.

Q. Do you know Det. Bias, too? A. Yes, sir, I do.

Q. Was he there? A. To the best of my recollection, yes, sir.

Q. Do you happen to know the officer that was in charge of the canine dog? A. No, sir, I don't.

MR. CAPUTY: I have nothing further, Your Honor.

205

RECROSS EXAMINATION

BY MR. SEWELL:

Q. Officer Jones, you can positively identify this ticket from the others because you can feel the dog's tooth print still in this ticket?

A. I thought so but I wasn't for sure, Mr. Sewell. I thought I felt one place there but that was the reason I wouldn't say for sure. I think there

is one indentation that feels like a tooth print. That is ticket 21.

MR. SEWELL: That is all.

MR. CAPUTY: Nothing further.

THE COURT: You may step down.

JOHN B. KLINE

was called to the stand on behalf of the Government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name and assignment, please? A. Det. Sgt. John B. Kline, assigned to the Sex Squad.

Q. And how long have you been assigned to the Sex Squad? A. Approximately two years.

Q. Is that the Sex Squad of the Metropolitan Police Department?

206 A. It is, sir.

Q. Were you working on August 16, 1961? A. Yes, sir.

Q. I show you, sir, what has been marked as Government's Exhibit Nos. 2, 2-A and 2-B for identification, the shirt and trousers and the shorts. I ask you to examine it and tell us whether you can identify it? A. I identify the underclothing and the trousers and the shirt as the same type of shirt I took from the defendant.

Q. And how do you identify them, sir? A. I turned these clothes over to Det. Bonaccorsy who initialed them and identify them by that.

Q. Did you see him initial them? A. Yes, sir.

Q. When was the first time you saw Government Exhibit No. 2 and 2-A which is the trousers and the -- 2-B the shorts for identification?

A. When I first saw them?

Q. Yes. A. It was some time after four o'clock on August 16.

Q. Where were you when you saw them? A. They were on the defendant in the Sex Squad.

207 Q. Now, the defendant, do you see that person here in the court room who was wearing them? A. I do, sir.

Q. Point him out. A. Sitting next to Mr. Sewell.

MR. CAPUTY: May the record show he identified the defendant, Your Honor?

THE COURT: Yes, sir.

BY MR. CAPUTY:

Q. How did you get those clothes, 2, 2-A and 2-B? A. About four o'clock I was asked to go by the defendant's house at 1810 H Place, Northeast, and ask his wife for some clothing which I did, change of clothing.

Q. What did the change of clothing consist of? A. As I recall, I asked her for a shirt and trousers, pair of shoes and some underclothing.

Q. Did you -- A. She put this in a bag -- I brought this bag down and consequently he changed his clothes in the office.

Q. And you gave it to Det. Bonaccorsy? A. Yes.

MR. CAPUTY: I have nothing further.

208

CROSS EXAMINATION

BY MR. SEWELL:

Q. Where did he change his clothes, Officer? A. In the Sex Squad.

Q. Sex Squad office? A. Yes, sir.

Q. Who was there? A. I believe I was the only one present.

Q. Who asked you to get the change of clothing? A. Det. Bonaccorsy, I believe.

Q. Was Officer Bonaccorsy off duty at the time? A. No, sir, he was not off duty.

Q. Well, now, Det. Kline, when he changed clothes, you took possession of these, how long was it between the time you turned them over to Det. Bonaccorsy and the time you took it from him? A. Oh, I would assume approximately an hour or two hours.

Q. Why didn't you mark them? A. Well, I had been asked by these officers to go and obtain these clothes and I turned them over to him and he marked them at that time and I saw it.

209 Q. You had them in your possession two hours? A. Approximately.

Q. How do you know these are the same clothes? A. I identified them by Det. Bonaccorsy's initials.

Q. Well, yours are not on there? A. No, sir.

MR. SEWELL: I have nothing further.

THE COURT: Is that all?

MR. CAPUTY: Yes.

THE COURT: All right, Officer, you may step down.

ANTHONY O'TOUSA

was called to the stand on behalf of the Government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name, please? A. My name is Anthony O'Tousa.

Q. What is your business or occupation? A. I am a special agent of the Federal Bureau of Investigation.

Q. How long have you been a special agent of the Federal Bureau of Investigation? A. For a period of seven years.

210 Q. Are you connected with any particular section of the Federal Bureau of Investigation? A. Yes, sir, I am presently assigned to the FBI Laboratory here in Washington, D. C.

Q. How long have you been assigned to the FBI Laboratory here in Washington? A. For a period of three years.

Q. And assigned as what, sir? A. I am assigned to the hair and fiber unit of the laboratory.

Q. What are your duties as part of the hair and fiber unit of the laboratory? A. Conduct examinations in criminal cases, materials related to hairs and fibers.

Q. What kind of an examination do you conduct, sir? A. The examination ordinarily comprises the comparison of hair and fibers.

Q. Do you conduct it microscopically? A. Yes.

Q. Have you conducted many such examinations during the period of time that you have been connected with that unit of the FBI? A. Yes, sir, I have conducted thousands of examinations.

Q. And have you rendered opinions as a result of that, sir? A. Yes, sir, I have.

Q. Have you testified in court? A. Many times, yes, sir.

Q. All right. Now, where did you receive your training for that particular line of study? A. I underwent a training course in the laboratory for one year until such time I was able to conduct independent examinations.

MR. CAPUTY: I believe he is qualified.

THE COURT: Do you have any preliminary questions?

MR. SEWELL: No, I am satisfied.

BY MR. CAPUTY:

212 Q. I show you, sir, what has been marked as Government Exhibit

No. 1 and 1-A for identification, a gown and a blouse, Government Exhibit 2, a shirt for identification, Government Exhibits 2-A, a pair of trousers and Government Exhibit 2-B, a pair of shorts. I ask you to examine them and tell us if you can identify them? A. Yes, sir, I have examined these

items in the FBI Laboratory and they bear my mark of identification.

Q. Would you look, also, sir, at Government Exhibit 7 for identification and tell us whether you can identify that? A. Yes, sir, I have also examined this item in the laboratory and it also bears my identifying mark.

Q. When was it then that you first saw Government Exhibit 1, the nightgown, 1-A, the blouse, Government Exhibit No. 2, the shirt, 2-A, the trousers and 2-B, the shorts, and Government Exhibit No. 7, that envelope?

A. On August 18, 1961.

Q. Where? A. In the FBI Laboratory.

Q. Under what circumstances? A. They were brought in for examination by Officer Bonaccorsy of the Metropolitan Police Department.

Q. Now, did you, sir, conduct any examination on any of these exhibits for identification? A. Yes, sir, I did.

Q. Which ones? A. I conducted examinations on all the items of clothing.

Q. Items of clothing? A. And Government Exhibit No. 7.

213 Q. Now, on which item did you conduct -- A. All items, sir.

Q. Now, specifically, sir, showing you Government Exhibit No. 1 for identification and 1-A for identification, would you tell us, sir, what kind of an examination you conducted on Government 1 and 1-A? A. I removed the fibrous material from each of these items and I found green woolen fibers in the debris removed from one-A and one and these green woolen fibers were similar in color and type to the green woolen fibers in Exhibit 7.

MR. CAPUTY: May I have these marked as Government Exhibit No. 9 for identification?

(Government Exhibit 9 was marked for identification).

MR. CAPUTY: 9-A and 9-B.

(Government Exhibits 9-A and 9-B were marked for identification).

BY MR. CAPUTY:

Q. Showing you, sir, what has been marked as Government Exhibit No. 9-A, 9 and 9-B for identification, and I ask you to examine it and tell us whether you can identify them? A. Yes, sir, Exhibit 9 contains glass

214 microscope slides bearing debris from the exhibit one and --

Q. Which is the nightgown? A. Yes, the nightgown.

Q. Now, sir, can you tell us whether you made an examination of what you removed from Exhibit 1 for identification with the known specimen, Exhibit No. 7 contained in that envelope? A. Yes, sir, I found in the debris removed from Government Exhibit No. 1, green woolen fibers which were similar in color and type to the green woolen fibers present in Government Exhibit No. 7.

Q. Same composition? A. The same type, yes.

Q. Now, do you have an opinion, sir, as to whether the specimen, Government Exhibit No. 1 for identification, whether it came from the known specimen, Government Exhibit No. 7? A. Yes, sir, my conclusion was that the green fibers, the green woolen fibers present in the debris from Government Exhibit No. 1 could have originated from Government Exhibit 7.

Q. Both of the same composition? A. Yes, that is right.

215 Q. Now, did you remove anything, did you say, from Government 1-A for identification? A. Yes.

Q. What is it of nine? A. Government Exhibit No. 9-A contains a glass microscope slide and bears the fibrous debris from Government Exhibit No. 1-A.

Q. Now, did you make an examination, a microscopic examination of the debris that you removed from Government Exhibit No. 1-A with the known specimen contained in Government Exhibit No. 7 for identification? A. Yes, sir, I did.

Q. What did that examination disclose? A. I found in the debris removed from Government Exhibit 1-A, green woolen fibers which were of the same color and type as the green woolen fibers in Government Exhibit No. 7.

Q. The same composition? A. Yes.

Q. Do you have an opinion, sir, as to whether the debris from the questioned specimen, Government 1-A, is the same as that contained in the known specimen Government Exhibit No. 7 for identification? A. Yes, 216 sir, I concluded that the green woolen fibers from Government Exhibit 1-A could have originated from Government Exhibit No. 7.

Q. Showing you Government 2-A for identification, a pair of trousers, I ask you to examine it, sir, and tell us whether you made -- whether you removed any debris from Government Exhibit 2-A for identification?

A. Yes, sir, I removed debris from Government 2-A.

Q. Now, can you tell us, sir, whether the debris you removed from Government Exhibit 2-A, whether you have this marked as an exhibit there before you, part of nine? A. Yes, I do. The debris removed from Government Exhibit No. 2-A, placed on a glass microscope slide and that presently is marked Government Exhibit 9-A.

Q. Now, do you have an opinion, sir, as to whether the debris found -- removed from Government Exhibit 2-A for identification which is part of Government Exhibit No. 9-A for identification, do you have an opinion, sir, whether that is -- is that of the same type as that contained in

Government Exhibit No. Seven for identification? A. Yes, sir, present in the debris removed from Government Exhibit No. 2-A were green
217 woolen fibers and these green woolen fibers were similar to the green woolen fibers present in Government Exhibit No. 7 as to color and type and I concluded that the green woolen fibers in the debris removed from 2-A originated -- I should have said could have originated from the same source as the fibers in Government Exhibit No. 7.

Q. The known specimen? A. That is correct.

MR. CAPUTY: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Is it possible to be positive about this? A. Possible to be positive about a fiber?

Q. Yes. A. It depends on the amount of the fibrous material present. I have made positive identifications based on fibers and in this particular case, I was only able to state that the fibers were similar in color and type and that they could have originated.

Q. You mean the known specimen was not sufficient or what you found on the clothing was not sufficient? A. That's correct.

218 Q. Which one is true? A. The latter is true. The single type of fiber present was a green woolen fiber. When I made the statement on the positive type of identification, when you have a mixture of fibers, you can be more positive. In other words, when something is composed of a number of fibrous materials you can be more positive than you can be when you find just a single type of fiber.

Q. This rug had just a single type of fiber? A. The fibers removed from the garment consisted of green woolen fibers which is one particular type of fiber and this particular type of fiber was present in the composition of the rug.

Q. Plus some other types of fibers? A. Oh, yes, there were other type fibers present in the rug.

Q. From what part of the trousers did you remove the fibers? How

did you remove it? A. The fibers are removed by placing the garment on a rack over a table which would -- we have a large sheet of paper which we change for each garment and we scrape the garment with a spatula so there would be no way to say that the fiber was adhering to this portion or that portion. It's a scraping process, sir.

219 Q. Were you aware of the type of case this is? A. Yes, sir.

Q. Showing you Government 1-A for identification, was this blouse on the victim over her nightgown or under her nightgown?

MR. CAPUTY: I object. He wouldn't know that.

BY MR. SEWELL:

Q. Where did you find fibers on this? A. Similar to the method of scraping this. These little fibers are not discerned without the use of a microscope and it is a matter of placing this over your scraping table and with the spatula scraping the debris and you will notice in this slide you have to do it under the microscope and this is not something you do with the naked eye.

Q. You scraped this in the same way? A. I scraped all the items the same way. This is a customary procedure in the laboratory.

Q. Did you scrape this? A. Yes.

Q. Did you find any? A. I found no green woolen fibers in that debris, no, sir.

220 Q. You determined this was not a custom made rug, is that correct?

A. No, sir, I did not.

Q. Did you determine whether it was a custom made rug? A. No, sir, I did not.

Q. Then the fibers on these articles could have come from any rug, is that right, of similar material? A. Yes, sir.

MR. SEWELL: Nothing further.

MR. CAPUTY: Nothing else.

THE COURT: You may step down.

CORNELIUS MC WRIGHT

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name, sir? A. Cornelius McWright.

Q. And what is your business or occupation? A. I am a special agent of the Federal Bureau of Investigation, presently assigned to the FBI Laboratory.

Q. How long have you been assigned to the FBI Laboratory?

221 A. Approximately five and half years.

Q. And in what capacity, sir? A. My duties involve the examination of blood and other body fluids in criminal type cases.

Q. Does your work also consist of the absence or presence of seminal stains? A. Yes, sir.

Q. Now, how many such examinations of body fluids and seminal stains have you made during the period that you have been connected to the laboratory? A. I have conducted thousands of examinations.

Q. And have you testified in court before? A. Yes, I have many times in both state and federal courts.

Q. Where did you get your training? A. I have a Bachelor of Arts Degree in biology with the related field of chemistry from Evansville College in Evansville, Indiana and I have done graduate work in physiology at Indiana University and graduate work in micro-biology bio-chemistry at George Washington University.

MR. CAPUTY: I submit he is qualified.

MR. SEWELL: Yes, sir.

222 BY MR. CAPUTY:

Q. I show you what has been marked as government exhibit No. 1 for identification, a nightgown and government exhibit No. 2 for identification, a pair of trousers and government exhibit No. 2-A, a-- 2-A, rather a pair of trousers and 2-B a pair of shorts. I ask you to examine them and tell us whether you can identify them? A. Yes, sir, I examined all three of these items for the presence of blood and seminal stains.

Q. Would you take government exhibit 1 for identification, the nightgown and tell us what, if anything, you found and what kind of an examination you conducted? A. I found several seminal stains present on the nightgown and I also found small stains of human blood too limited for grouping purposes.

Q. Now, would you look at government exhibit No. 2-A, the trousers. A. Yes.

Q. Tell us what kind of an examination you conducted on that, if at all? A. I examined the trousers for the presence of seminal stains and for the presence of blood. I found on the front of the trousers, near 223 fly area, seminal stains and I found no blood on the trousers.

Q. Now, would you look at government exhibit 2-B for identification, the pair of shorts and tell us whether you conducted any examination on the shorts? A. Yes, sir, I did. I examined for the presence of seminal stains and for blood. On the front of the shorts, near the fly area, I identified seminal stains. On the inside of the shorts, I identified a small human blood stain, however, it was insufficient for blood group determination.

Q. When you say the inside of the shorts, what part of the shorts? A. The front part near the fly area.

Q. How did you conduct that examination to determine the absence or presence of seminal stains on government exhibits 2-A and 2-B for identification? A. An examination for semen requires that the small portion of the stain be removed and extracted with water and then after the extraction is made, one microscopically identifies spermatozoa, the male reproductive cells.

Q. Now, can you tell me, sir, whether government exhibit 2-A, the trousers, if they were laundered or dry cleaned, would you be able to 224 determine the absence or presence of seminal stains? A. This

would depend on the degree to which the trousers were subjected to the cleaning. Generally a thorough cleaning process would remove any traces of semen. However, if these trousers were cleaned after the semen was deposited on them, then they were not cleaned very well because usually the cleaning process would remove stains such as seminal stains.

Q. And government exhibit 2-A, the trousers, the fly area there, if it had been washed with soap and water, could you tell us, sir, whether in your examination, after that washing of soap and water, would you be able to detect the presence of any seminal stains? A. There again it would depend on the degree of washing. If it were washed sufficiently to remove dirt, it would also remove semen.

Q. What do you mean by washing sufficiently? A. The normal home laundry process does remove semen.

Q. One washing? A. Yes, sir.

Q. Would you look at -- would you tell us, sir, whether a washing of government exhibit 2-B, if it had been washed with soap and water, could you tell us whether you would have been able to detect the presence 225 of semen? A. There again, if the shorts were washed sufficiently, all traces of semen would be removed, that is, I would be unable to detect the presence of seminal stains.

However, if a very light laundry -- a very light washing had occurred, it is possible that semen would not be removed but as I previously stated, a normal home laundry would remove seminal stains.

MR. CAPUTY: That is all.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Mr. Witness, could you tell us how long the seminal stain had been on the nightgown? A. No, sir.

Q. You received this on the 18th? A. No, sir, I received this on August 21 from Mr. O'Tousa of the FBI Laboratory.

Q. You couldn't determine whether any of the seminal stains were fresh, is that right? A. That is correct.

Q. Now, referring to the shorts, if a person should sleep in shorts that they had been wearing all day, is it possible for --

226 THE COURT: Not possible, sir.

BY MR. SEWELL:

Q. Would there be traces of seminal stains on the shorts without the person having engaged in an intercourse? A. That is quite possible. This occurs through a nocturnal omission.

Q. And the same situation could account for the stains on the night-gown, is that true, sir? A. Well, this being a lady's nightgown, woman do not have semen. Semen is limited strictly to the male species.

* * * * *
REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. The blood on the inside of government 2-B, the shorts, would that be due to a nocturnal omission, sir? A. No, sir.

RE CROSS EXAMINATION

BY MR. SEWELL:

Q. Do you know what it would be due to? A. The blood on the shorts would have to be due to an injury of some type.

Q. You say it would have to be? A. Yes, sir.

Q. You couldn't tell whose blood it was? A. No, sir.

MR. SEWELL: No further questions.

THE COURT: All right, sir, you may step down.

MR. CAPUTY: At this time, if Your Honor please, I would like to offer government exhibit No. 1, the nightgown and 1-A, government exhibit 2, the shirt, 2-A, the trousers, 2-B, the shorts, government exhibits 3, which are the tickets and the slides, government exhibit No. 4, 5 and government exhibit 7 for identification, the fibers from the rug and government exhibits 9, 9-A and 9-B into evidence as government exhibits.

THE COURT: If there be no objection, they will be received.

MR. SEWELL: I have objected to one.

THE COURT: Come to the bench.

(BENCH CONFERENCE:)

MR. SEWELL: The blouse, before that is admitted into evidence, I would like to have Mrs. Waters tell us where she had this, under the gown or where.

THE COURT: I will treat that as offered, if you want me to, sir.

228 MR. CAPUTY: I will withdraw 1-A. It doesn't make any difference.

MR. SEWELL: That doesn't solve my problem.

THE COURT: Let's find out. You may speak with the lady.

(END OF BENCH CONFERENCE.)

(Mr. Caputy and Mr. Sewell spoke with Mrs. Waters.)

(BENCH CONFERENCE:)

MR. CAPUTY: She said she didn't wear this. This was in the container with the soiled clothes.

MR. SEWELL: This is my problem: This was turned over to the agent of the hair and fibers division of the FBI and he got fibers from this garment and testified to them and the nightgown is not a clean nightgown and I don't know whether it was in the hamper with the dirty clothes or not.

THE COURT: Was she asked about this when she was on the stand?

MR. CAPUTY: I think I forgot to ask her and I don't think counsel asked her either.

THE COURT: He said he would withdraw it so far as he is concerned. Do you want her to be brought back and testify?

MR. SEWELL: Well, I think I would appreciate her being put back on the stand.

THE COURT: All right.

229

(END OF BENCH CONFERENCE.)

META WATERS

was recalled to the stand, being previously sworn, was examined further as follows:

RECROSS EXAMINATION

BY MR. SEWELL:

Q. Mrs. Waters, I show you what has been marked as government exhibit No. 2-A for identification. Can you identify this article?

A. That belongs to me.

Q. And on the night of the 15th, did you have this garment on?

A. No.

Q. Can you tell us when you had last worn it? A. Maybe a week before that.

Q. The 15th? A. Yes.

Q. Is this blood on the garment? A. I don't know.
Q. Does it look like blood to you? A. I couldn't tell.
Q. Can you tell us what these stains are, if you know? A. I
230 couldn't tell.

Q. Did you give this blouse to the police? A. No.
Q. Do you know where they got it from? A. No.
Q. But it is yours? A. That is mine.
Q. Now, do you have more than one nightgown? A. Yes.
Q. Did you give this gown to the police? A. No.
Q. You did not? A. No.
Q. Where did they get it from? A. I don't know.

MR. SEWELL: I have no further questions.

REDIRECT EXAMINATION (Cont'd.)

BY MR. CAPUTY:

Q. That is the gown you were wearing on the night of August 15?
A. Yes, sir.

231 Q. You don't remember giving it to the police? A. I don't
remember.

MR. CAPUTY: That is all.

THE COURT: You may step down. Watch your step, please.

MR. SEWELL: I object to one and one-A.

THE COURT: You object to one-A going in?

MR. SEWELL: Yes.

THE COURT: All right. One-A is out, Ladies and Gentlemen; you will ignore anything that has been said with reference to one-A.

MR. CAPUTY: May the jury be instructed to ignore anything the agent said about the fibers on one-A?

THE COURT: All the testimony regarding the exhibit 1-A is out by request of both counsel, Ladies and Gentlemen.

THE COURT: The exhibit 1 is in and will be received with the rest of your request.

(Government exhibits 1, 2, 2-A, 2-B,
3, 4, 5, 7, 9, 9-A and 9-B were
received in evidence.)

MR. CAPUTY: May I recall Det. Holden?

THE COURT: Yes, sir.

WILLIAM R. HOLDEN

was recalled to the stand on behalf of the government, previously sworn,
232 was examined further as follows:

REDIRECT EXAMINATION (Cont'd.)

BY MR. CAPUTY:

Q. Det. Holden, you testified yesterday that government exhibit No. -- ticket No. 21, part of government exhibit No. 3 that you recovered that in the premises at 1213 I Street, Northwest, on August 15 or 16th on the floor? A. I did, sir.

Q. Do you recall your testimony? A. I do, sir.

Q. Now, was that ticket at any time after you recovered it out of your presence? A. Yes, sir, it was.

Q. Where? I withdraw that question.

MR. SEWELL: I would like to approach the bench.

(BENCH CONFERENCE:)

MR. SEWELL: Your Honor, Mr. Caputy is attempting to have this officer commit perjury when he said he found that ticket in the premises. He gave it to Officer Bonaccorsy.

MR. CAPUTY: I am withdrawing the question.

(END OF BENCH CONFERENCE.)

BY MR. CAPUTY:

Q. Was that ever anywhere else, sir? A. Yes, it was.

Q. Where? A. In private Jones' possession.

Q. Prior to being in Private Jones' possession, was it anywhere else other than that? A. Yes.

Q. Where? A. It was in my possession and I put it out on the front steps.

Q. You put it on the front steps at what time? A. I would say it was around one o'clock or so, shortly after I responded there because the canine corps responded also and I had in my possession and I put it out on the front steps and walked back upstairs so the dog could smell it and couldn't get to me.

Q. How long were you out of the presence of the dog? A. Well, I was upstairs watching, I would say.

Q. Did you watch? A. Just for a short time.

234

Q. What then happened to ticket 21? A. Then the dog smelled it and then they took off and they trailed it to the K Street Garage and one of the dogs started to chew it and I asked Jones if it was possible to get prints off it and he said no because it was wet and at that time he held it and later on it had been so chewed up he couldn't get prints off of it and he gave it back to me.

MR. CAPUTY: That is all.

RECROSS EXAMINATION (Cont'd.)

BY MR. SEWELL:

Q. Det. Holden, you testified twice now. You testified September 1 and you testified yesterday about it. Why didn't you tell us you put it on the front porch? A. I don't think I was asked that question.

Q. Well, you were asked what you did with the ticket and you said you kept it in your possession, sir, until you gave it to Officer Bonaccorsy the next morning. A. I suppose I did.

Q. Why didn't you tell us yesterday about the canine corps? A. I wasn't asked and I didn't recall it.

Q. Now, who did you talk with before you came in here this morning? A. Det. Bonaccorsy when he called me on the phone to come down.

235

Q. Did he tell you what Jones had said over here? A. No.

Q. What did he say? A. He told me to come down here, Mr. Caputy wanted me right away.

Q. Nobody told you anything about what happened here this morning? A. No.

Q. You said you remembered about the canine corps, is that correct? A. Yes, sir.

Q. Who were the officers who had the dogs? A. The dogs, I don't know.

Q. Who took the ticket from the dog? A. The dog just smelled it and chewed it and I suppose it was that officer there.

Q. I thought you said you asked Jones to take it. A. I asked Jones to take it after I saw how mutilated the ticket was.

Q. Is this the ticket that was mutilated? A. Yes.

Q. Who straightened it out, Officer? A. I did.

236 Q. What did you do? A. It was all wet and chewed up -- it was not chewed up but it was bent up.

Q. What process did you use to straighten it out like it is now?

A. All I used was my hands to take the saliva off of it.

Q. Were there any imprints of the dog on here? A. I don't recall.

Q. When did the dog have it in his mouth? How long? A. I don't have any idea how long.

Q. Had you put your initials on it when you put it outdoors?

A. Not at that time.

Q. What step did you put it on? A. Either the second or the third step. I think there are four steps there leading up to the porch. I put it on the second or third step.

Q. Tell me, how many police officers were on the scene when you arrived? A. I don't have any idea, quite a few.

Q. Were there 12? A. I couldn't say.

237 Q. Do you have any idea whether any of these officers had been on duty at the ball park? A. I wouldn't know that.

Q. You don't know? A. No.

Q. You don't know the name of the officer that had the dog?

A. No, sir, I don't.

Q. Where was Jones when you first spoke to him? A. Where was Jones?

Q. Yes. A. He responded to the scene and came inside of the premises.

Q. Is that when you first saw him? A. Yes.

Q. When did you tell him about the dog and the ticket? A. During the time that he was processing the place for fingerprints.

Q. Tell me, Officer, was the canine corps there when you got there? A. No, sir, they were not.

238 Q. Now, when they came, when the officer came with the dog, the rape occurred in the second room, didn't it? A. The second room.

Q. The ticket stub was in the second room, isn't that so? A. Yes.

Q. Now, the rape occurred in there? A. Yes, sir.

Q. If you wanted the dog to get the scent off the ticket, why couldn't he get it in the room where it occurred? A. Because the ticket was in my pocket at the time and I had already picked the ticket up and had it.

Q. Did that destroy the scent? A. It would have my scent on it that was the purpose of putting it outside.

Q. Well, if it had your scent inside, would that change it putting it outside? A. The dog was not inside.

Q. I am trying to find out why. A. So the dog could get the scent.

Q. Couldn't he get it from the inside? A. Yes, sir, but the dog was not inside.

Q. Couldn't he have come in? A. He could but he didn't.

239 Q. Did you ask him to bring the dog inside? A. No.

THE COURT: Are you a dog handler, Officer?

THE WITNESS: No, I am not.

THE COURT: When I say a dog handler, Ladies and Gentlemen, you know what I mean, a member of the canine corps.

BY MR. SEWELL:

Q. What time did you get it back from Jones? A. Some time during the night. I don't recall the time. Maybe four or five o'clock. I went to the hospital first.

Q. Four or five o'clock in the morning. A. The next morning, yes, sir.

Q. When you told us yesterday that the ticket had been in your possession from the time you found it until you gave it to Mr. Bonaccorsy, that was not true, was it? A. I don't think I said that, sir. I said I had the ticket and turned it over to Det. Bonaccorsy.

Q. When did you straighten it out, before you gave it to Jones?

A. It was mutilated. I don't recall.

MR. SEWELL: That is all. I have nothing else.

240

REDIRECT EXAMINATION (Cont'd.)

BY MR. CAPUTY:

Q. Have you talked to me since you have been on this stand?

A. No, I have not.

RECROSS EXAMINATION (Cont'd.)

BY MR. SEWELL:

Q. You talked to Bonaccorsy, haven't you? A. Just enough for him to call me in here.

Q. You had no idea why you were being called back here? A. None whatsoever.

MR. SEWELL: I have nothing else.

THE COURT: All right, sir, you may step down.

MR. CAPUTY: I have nothing further.

I would like to offer - I think I offered the exhibits all in evidence.

THE COURT: All the exhibits have been received except 6 and 1-A.

MR. CAPUTY: Your Honor, I would like to offer six, the photographs.

(Government exhibit No. 8 was received in evidence.)

THE COURT: I will sustain the objection unless you can relate them to who took them.

241

MR. CAPUTY: I understand that the police officer who took them -- who observed whoever took them, is next door in the court room.

THE COURT: You may have an opportunity to call him, certainly.

MR. CAPUTY: May I have Lt. Tate?

THE COURT: How long will you need this witness, sir?

MR. CAPUTY: Just for a couple of minutes, Your Honor.

THE COURT: We will try to get the witness for you.

EDWARD W. CLOUSE

was called to the stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you state your name and assignment? A. Edward W. Clouse, assigned to the First Precinct.

Q. Can you talk a little louder? A. Yes.

Q. Assigned to the First Precinct? A. Yes, sir.

Q. What was your assignment on August 16, 1961? A. The same thing, plain clothes duty, First Precinct.

242 Q. Now, directing your attention to August 16, 1961, were you working that day? A. Yes, sir.

Q. And did you work alone or were some other officers with you? A. I worked with Det. Bonaccorsy of the Sex Squad that day.

Q. Do you know a person named Charles Clemons? A. Yes, sir.

Q. Do you see that person in the court room? A. Yes, sir.

Q. Would you point him out? A. Right over there.

THE COURT: How is he dressed, Officer?

THE WITNESS: He is wearing a short sleeved shirt.

MR. CAPUTY: May the record show that he identified the defendant?

THE COURT: Yes, sir.

BY MR. CAPUTY:

Q. Now, directing your attention to August 16, 1961, did you see this person whom you have just identified as the defendant Clemons?

243 A. Yes, sir.

Q. And where was it that you saw him? A. When I first saw him, at his place of employment at 1741 Johnson Avenue, Northwest.

Q. And was Officer Bonaccorsy there when you saw him?

A. Yes, sir.

Q. Now, when you saw him there at his place of employment, did you have a conversation with him? A. Yes, sir.

Q. Now, after that conversation, did you go anywhere? A. We went to his home.

Q. All right. Now, what did you go there for? A. We went with him to look for a baseball ticket that he said might possibly be in his home in the clothes.

Q. Now, this baseball ticket that he said might be at his home, do you recall whether it had a seat number on it? A. Yes, sir, it was seat number 21.

Q. Now, was anything said by this defendant concerning that ticket seat number baseball ticket 21? A. Just that he thought possibly it might be in his clothes that he wore the night before.

Q. All right. Now, can you tell us, sir, whether in talking to him -- 244 had you had any conversation with him concerning a baseball game the night before? A. Yes, he said he went to the baseball game the night before.

Q. Was any statement made by the defendant what seat, if any, he sat in at the baseball game? A. He said he sat in seat 21.

Q. Seat 21? A. Yes, sir.

MR. CAPUTY: No further questions.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Officer Clouse, who did he tell this to, you or Bonaccorsy? A. We were together.

Q. Now, you think Bonaccorsy heard it? A. He possibly did.

Q. Where were you when he told you he sat in 21? A. I don't know if we were still up at the place of employment or in route to his house. I don't remember.

Q. How did you know it was seat 21 that he had? A. I didn't know that it was.

245 Q. You testified you asked him about seat 21 before you left.

THE COURT: I didn't understand that. Ladies and Gentlemen, it is your recollection.

BY MR. SEWELL:

Q. Did you, in response to a question by Mr. Caputy, state that you questioned this defendant about seat 21? A. I said that he told us that he sat in seat 21.

Q. When did he tell you that? A. I said I didn't remember if this was at his employment or in route to his home.

Q. Well, before you talked to Clemons at his place of employment, you did talk to a man named James Wills, Sr., didn't you? A. Yes, sir.

Q. You did talk to a man named Cox? A. Yes, sir.

Q. What did they tell you?

MR. CAPUTY: This is hearsay; I object.

THE COURT: I will sustain the objection.

BY MR. SEWELL:

246

Q. Did you get the information that Clemons was in seat 21 from others?

MR. CAPUTY: That is going around it.

THE COURT: Yes.

BY MR. SEWELL:

Q. Did you reduce the statement that Clemons made to writing?

A. No, I did not.

Q. Can you tell me why? A. I have no reason.

Q. All right. When you went to his home, did you go in?

A. Yes, sir.

Q. And who left first, you or Bonaccorsy? A. I left with Clemons.

Q. Did you place him under arrest? A. Yes, sir.

Q. You did? A. Both of us did.

Q. When? A. I guess when we brought him outside.

Q. Did you bring him out together? A. I walked out with him first and Officer Bonaccorsy was talking to the defendant's wife.

247

Q. Did you have him under arrest at that point? A. I guess he was.

Q. Did you tell him he was under arrest? A. I didn't personally tell him he was under arrest.

THE COURT: Was he in custody, Officer?

THE WITNESS: I was right with him.

BY MR. SEWELL:

Q. Where did you go after you left his house? A. Where?

Q. Yes. A. We went to 15th and H, Northeast, I believe it was.

Q. Who was driving the car, you or Bonaccorsy? A. Bonaccorsy was driving.

Q. Did you make a call? Did Bonaccorsy make one in your presence?

MR. CAPUTY: Your Honor --

THE COURT: I will let him answer if he knows.

THE WITNESS: Bonaccorsy called for Lt. Tate to meet us there.

BY MR. SEWELL:

Q. Did you hear a conversation that took place there? A. No, he got out of the car and talked to the -- to Lt. Tate.

248 Q. Did Lt. Tate come back to the car where you were? A. He finally did come over.

Q. Did he say anything to Clemons in your presence? A. He asked Clemons if he would like to go back to his house and pick up the clothing that he was wearing the night before.

Q. Did he say pick them up or change into them? A. I don't recall if he said change or what.

Q. What did Clemons do? A. At this time?

Q. Yes. A. He said, sure, he would like to go back.

Q. You took him back? A. We all went back over there.

Q. Didn't he change his clothes? A. Yes.

Q. Were you at the line-up? A. Yes.

Q. Did the complainant identify --

MR. CAPUTY: Your Honor, this is way beyond the scope of the direct examination.

249

THE COURT: Yes, sir. If you want to make him your witness, you may.

MR. CAPUTY: I will withdraw, if Your Honor please, to save time.

THE COURT: All right.

BY MR. SEWELL:

Q. Did the complaining witness identify him in the line-up?

A. She did not positively identify him, no.

Q. Well, did she identify anybody in any kind of way? A. She stated that Clemons looked more like the person than anyone else in the line-up.

Q. And did she say she knew anybody else in the line-up? A. It seems to me like she said she knew some person standing there but I don't know for sure. I believe she said she knew some police officer that was standing there.

Q. How many police officers in the line-up? A. I don't know.

THE COURT: Did you make up the line-up, Officer?

THE WITNESS: No.

BY MR. SEWELL:

Q. Why did you say it was a police officer?

THE COURT: What was that?

250

MR. SEWELL: He said it was a police officer. I am asking him how he knows?

THE COURT: Do you know there was a police officer in the line-up?

THE WITNESS: Yes.

BY MR. SEWELL:

Q. I ask you, how do you know? A. I said I believe she said that she knew this man that was in the line-up. He was a police officer.

Q. Was it Milton Taylor? A. I believe his name is Taylor.

MR. SEWELL: I have no further questions.

MR. CAPUTY: No further questions.

THE COURT: All right, you may step down.

Ladies and Gentlemen, we will recess for lunch until 1:45 with the same admonition, please.

(Whereupon, at 12:30 p.m. court recessed until 1:45 p.m. the same day.)

251

Afternoon Session
1:45 p.m.

THE COURT: You may proceed, Gentlemen.

MR. CAPUTY: May we approach the bench?

(BENCH CONFERENCE:)

MR. CAPUTY: Your Honor, I have two more witnesses, Lt. Tate and Acree and I would like to tender them to the defense but counsel has said that he didn't care for them. I have the man about the photographs and then I will be ready to rest but he is still testifying on the stand in another court.

THE COURT: Personally, I don't see the pictures make much difference but you are the one to determine that.

MR. SEWELL: Your Honor, I have made a mistake. I would like to withdraw my objection to government's exhibit No. 1-A.

THE COURT: Well, I think I will let it stand as it is. If it becomes material later you may introduce it.

MR. SEWELL: Well, since it was testified to by the officer that the garment had rug fibers on it and when it actually came out of the dirty clothes hamper, I could argue that.

252

THE COURT: Do you have any objection to it being received?

MR. CAPUTY: Well, no.

MR. SEWELL: I think it ought to go in.

THE COURT: It can go in by stipulation. Both counsel agreed it go out and now both agree it can go in and all testimony relating to it.

MR. CAPUTY: I would like to have the photographs, if I may, if Your Honor please.

THE COURT: We will try to get the witness for you, sir. Do you gentlemen want me to make a statement to the jury about 1-A?

MR. SEWELL: Yes, Your Honor.

(END OF BENCH CONFERENCE.)

THE COURT: Ladies and Gentlemen, you will recall that both counsel heretofore did agree that 1-A which was a blouse would go out and all the testimony relating to it would go out.

By stipulation now of government counsel and defense counsel, they have agreed that it should be received in evidence.

It is received in evidence and, of course, all testimony relating to it you will now have before you plus the garment itself.

Is that a fair statement, Gentlemen?

(Government's Exhibit No. 1-A was received in evidence.)

MR. SEWELL: Yes.

MR. CAPUTY: Yes.

THE COURT: We are waiting for a witness and I have been informed that he will be available in about ten minutes. We will recess for ten minutes, Ladies and Gentlemen, with the same admonition.

(Whereupon, a short recess was taken.)

ROBERT SANDBERG

was called as a witness on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. State your name and assignment, sir. A. Sgt. Robert Sandberg.

Q. What is your assignment? A. Attached to the Identification Bureau, Metropolitan Police Department.

Q. And how long have you been so attached? A. Since 1941.

Q. What does your work consist of attached to the Identification Bureau? A. Taking of photographs, fingerprints.

Q. During the time that you have been a member of the Identification Bureau, can you tell us, sir, whether you have taken many or few photographs of individuals? A. Quite a few.

MR. SEWELL: I will stipulate that he is qualified.

THE COURT: You may proceed, Mr. Caputy.

MR. CAPUTY: May I have this envelope marked as government's 6-A?

THE COURT: Yes.

(Government's exhibit No. 6-A was marked for identification.)

BY MR. CAPUTY:

Q. I show you, sir, what has been marked as government's exhibit No. 6-A for identification and government No. 6 being some photographs and I ask you to examine the envelope, 6-A and 6, the photographs, and tell us whether you can identify either one or both? A. I can.

Q. And how do you identify 6-A? A. I typed this on the envelope. My name is on it.

Q. When? A. On the 8-16-61.

255 Q. Can you identify six for identification? A. Yes, sir, I can.

Q. And how do you identify it? A. Photographs of a lady that was in our office at the same time that I made this jacket.

Q. Did you take those photographs? A. I took the photographs.

Q. Did you develop it, sir? A. Yes.

Q. Does that photograph depict the person as you saw her as of the time you took the photographs? A. Yes.

MR. CAPUTY: That is all.

CROSS EXAMINATION

BY MR. SEWELL:

Q. Did you go to 1213 I Street, Northwest, at all? A. No, sir.

Q. What time of the morning did you take that picture? A. It's on the jacket there.

Q. 3:20 p.m., is that correct? A. Whatever it says. I didn't look at it.

256 Q. Where has this jacket been since -- A. Well, I can tell you the procedure.

Q. Tell me where this has been, if you know. A. I can only assume.

Q. What did you do with it? A. I typed it up and I keep it on the desk until I get the picture out and then I put it in there and the officer who picks it up from out office will sign for that picture and jacket.

Q. Who picked this one up? A. I don't know.

Q. Who, sir? A. I don't know.

Q. When did he pick it up? A. I can't answer that.

Q. Well, what day did you develop the pictures? A. I developed that practically the same period.

Q. Do you use a Polaroid camera? A. No, sir, four by five.

Q. Who is Puckett? A. He is an officer that was working with me at the time.

Q. Did he help take these pictures? A. No, he was there.

257 Q. Therefore, his name is on here? A. We put down the names of the officers that are present. There are always two present at the taking of those type of pictures.

Q. To your knowledge, sir, do you know where the woman came from when she came to your office? A. No, sir.

Q. Who brought her there? A. She came from the Sex Squad and I think it was Mr. Smith.

MR. SEWELL: I have no further questions.

MR. CAPUTY: Nothing further.

THE COURT: You may step down, sir.

MR. CAPUTY: In view of counsel's questions, I would like to recall Officer Bonaccorsy to see if he knows where those pictures have been.

THE COURT: What is the reason for it?

MR. CAPUTY: Well, I guess I don't need it.

THE COURT: If there be no objection, they are received.

(Government's exhibits 6 and 6-A
were received in evidence.)

258 MR. CAPUTY: If Your Honor please, I would like the court's permission to recall for several questions, in light of what has transpired this morning, Officer Bias.

THE COURT: Very well.

JOHN J. BIAS

was recalled to the stand on behalf of the government, being previously sworn, was examined further as follows:

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Officer Bias, is that how you pronounce your name?

A. Yes, Bias.

Q. During the period of time that you were at 1213 I Street, Northwest, on August 15, 16, 1961, can you tell us, sir, whether you had seen any member of the canine corps there at that time? A. Yes, sir, I did.

Q. Now, in the period of time that you had seen a member of the canine corps, can you tell us, sir, whether Det. Holden was there at the time that you saw the canine corps there? A. Yes, he was.

Q. Can you tell us whether you had seen Det. Holden do anything with the ticket No. 21, sir? A. Yes, sir.

259 MR. SEWELL: I object, Your Honor. I am going to object to it because it is not proper. I don't know what kind of examination could make it proper. This is not redirect.

THE COURT: You had not closed your case?

MR. CAPUTY: No, sir.

THE COURT: I will permit it.

BY MR. CAPUTY:

Q. Did he do anything with ticket No. 21, part of government exhibit No. 3? A. Yes, he did.

Q. Now, will you tell us what, if anything, Det. Holden did with this ticket and where? A. He placed this ticket on a step. It was one of the lower steps going up to 1213 I Street. The handler of the dog was then asked to see if the dog would pick up a scent. He took the dog to

the ticket and pointed his nose at it, gave his command and at that time the dog swiped out with his tongue and picked the ticket up. Several of the officers grabbed at the dog and the trainer got the ticket from his mouth and put it back on the step.

Q. Now, at the time that that happened, sir, can you tell us --
260 do you know Officer Jones? A. Yes, sir, I do.

Q. Was he there at the time when this action was performed by this canine dog? A. I would only assume he was, but I can't say that he was.

Q. Now, prior to the time, sir, that the canine dog swiped at that ticket, can you tell us whether the canine dog had sniffed anything else? A. Yes, sir, he had.

Q. What, if you know, had the canine dog sniffed? A. It was a blouse. It was a blouse which was found in the door way.

Q. I show you, sir, government's exhibit No. 1-A for identification-- in evidence, I ask you to examine it and tell us whether you can identify it or not. A. I can only say it looks like the garment.

Q. Looks like the blouse of what? A. That was found in the vestibule by the door leading into 1213 I Street, Northwest.

Q. What, if anything, was done to that blouse and the dog? A. This was also given to the dog to see if he could pick up a scent.

Q. Who did it? A. The canine man.

261 Q. And where did the canine man get it, if you know? A. I don't know.

MR. CAPUTY: That is all I have, if Your Honor please.

RECORD EXAMINATION

BY MR. SEWELL:

Q. When did you remember that Officer Holden put this ticket on the steps? A. I knew it all along.

Q. And did you talk with anybody about this case this morning? A. You mean today, prior to today?

Q. Today. A. Yes, I had.

Q. Who did you talk with? A. I had discussed it out front.

Q. Officer Bonaccorsy? A. I don't believe it was him.

Q. Officer Jones? A. I discussed it with several of them.

Q. Who are they? A. I would say it was Jones. It was Det. Clouse and I think Lt. Tate.

262 Q. And Holden? A. Yes, I think so.

Q. And did you and Holden discuss his placing the ticket on the steps? A. Yes.

Q. Prior to your taking the stand here today? A. That's right.

Q. When had you discussed it previously? A. After he got off the stand here. I told him I remembered the incident.

Q. Do you know who found this blouse? A. I would say Officer Holden.

THE COURT: Do you know, Officer?

THE WITNESS: Officer Holden.

BY MR. SEWELL:

Q. Did you see him find it? A. Yes, sir.

Q. Do you know where he got it from? A. Yes, sir.

Q. Where? A. It was in the vestibule to the right as you walk out of the premises 1213 I Street.

263 Q. Was it in a dirty clothes hamper? A. No, it was laying on the ground at the door way.

Q. Officer, you didn't have any evidence at all that Mrs. Waters was wearing this blouse when the attack occurred? A. That's correct.

Q. She had a nightgown on, didn't she? A. Yes, sir.

Q. She didn't have the blouse on? A. No, sir.

Q. Why did you want the dog to pick up a scent from this blouse? A. Because this blouse was found in the hall way and it also had some wet traces that we thought were used in the premises by the person who allegedly raped her.

Q. Was the canine taken inside to pick up the scent? A. I don't believe so.

Q. Do you know the name of the officer that handled the dog?

A. Off hand I don't know his name.

Q. Do you have a record of it anywhere? A. I don't have it, no, sir.

Q. Did you see it recorded anywhere? A. No, sir, I have not seen it recorded.

264

MR. SEWELL: I have nothing further.

REDIRECT EXAMINATION (Further)

BY MR. CAPUTY:

Q. You were asked by counsel concerning government exhibit 1-A, the blouse. Now, did you have any information concerning government exhibit 1-A which caused you to give it or have the dog sniff it?

A. No, I had none.

Q. Did any police officer have it to your knowledge? A. No. I am not sure. I couldn't answer that.

MR. CAPUTY: That's all.

THE COURT: All right, Officer, you may step down.

MR. CAPUTY: Subject to the tender at the bench, the Government rests.

MR. SEWELL: May be approach the bench?

THE COURT: Yes, sir.

(BENCH CONFERENCE:)

MR. SEWELL: Your Honor, at this time I would like to make a motion for a directed verdict in this case and the reasons, Your Honor, is that Mrs. Waters -- this man has not been identified by Mrs. Waters in any respect whatsoever and but for the ticket stub, there wouldn't be any case here.

265

I am really shocked at the testimony of the police officers concerning this ticket, and since Officer Jones came in here yesterday and testified and stated that he found the ticket and he stated that he got there a little bit after mid-night and Officer Holden, who had previously testified, that he was the first officer that found the ticket and he testified he didn't get

there until 12:20 and so the way the testimony stands now, Officer Jones beat him there but what they have done, they have compounded what I call perjury on the their part and Det. Holden now says he put the ticket on the steps and Officer Bias says he saw him do it.

I believe if this case is sent to the jury they will have to speculate as to everything that is in it and the agent testified he got some fibers from the blouse and it has been established that blouse came out of the dirty clothes hamper by Mrs. Waters and it makes you wonder about the gown because she testified she owns several gowns just like that and Your Honor has seen the gown and you have seen how dirty it is and I doubt if any woman would sleep in a gown that dirty and the inference can be drawn that it came from the dirty clothes hamper also and as far as the trousers are concerned, about the fibers, Your Honor, with everything else that has gone on in this case, I wouldn't put it past the

266 officers to have taken the trousers up there and rubbed them across the rug to get the fix.

THE COURT: You are speculating now and I can't do that.

I think a lot of this was brought on because the officers were not asked about the things.

MR. SEWELL: On September 1 we held a preliminary hearing to get Officer Holden there and he testified that he was the first officer to find the ticket and we asked what he did with it and he said he kept it in his possession until he handed it over to Officer Bonaccorsy the next morning.

The trial in this case, we asked him what he did with it and he says he put it on the steps. He was asked what he did with it, the ticket, after he found it.

THE COURT: Do you want to say anything, Mr. Caputy?

MR. CAPUTY: No. I believe there is sufficient evidence for this case to go to the jury.

THE COURT: I believe there is sufficient evidence for this case to go to the jury.

All that you are saying, Mr. Sewell, are matters you may argue to the jury and it will be up to them.

(END OF BENCH CONFERENCE.)

267

VERNIE E. TATE

was called to the stand on behalf of the defendant, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SEWELL:

* * * * *

270 Q. I see. Now, did you attend the line-up? A. Yes, I was present at the line-up but I did not necessarily arrange it. It was arranged between Det. Bonaccorsy and Clouse and I believe Det. Wolfgang was present.

Q. Do you know the person who were in the line-up? A. No. That was a four man line-up and I know Mr. Clemons was in there.

Q. You don't know the other people? A. No. It is a matter of record.

Q. Were you present when Mrs. Waters pointed to a person in the line-up, not Clemons, saying she knew the man?

MR. CAPUTY: There is no such testimony on the part of Mrs. Waters.

THE COURT: Reframe your question, please.

BY MR. SEWELL:

271 Q. Were you present when Mrs. Waters identified or explained she knew a person in the line-up?

THE COURT: Did you hear any statement made by Mrs. Waters in connection with the line-up?

THE WITNESS: Yes, Your Honor.

THE COURT: What was that, sir?

THE WITNESS: She stated -- she pointed out one man and she said that man has been to my office seeking employment and I think she asked what type of work he did or something. She remembered him through some business transaction.

BY MR. SEWELL:

Q. She didn't tell you that she caught him peeking in her window?

A. No, I don't recall her telling me that. I do know she did recognize one.

MR. SEWELL: I have no further questions.

CROSS EXAMINATION

BY MR. CAPUTY:

Q. This person she pointed to as seeking employment in her office, was it this defendant she pointed to? A. Oh, no.

272

Q. Someone else in the line-up? A. Another man in the line. I don't recall his name, sir.

Q. If you heard the name, do you think it would refresh your recollection? A. I probably wouldn't remember because I have handled many line-ups since then.

MR. CAPUTY: That is all.

THE COURT: You may step down.

JAMES WILLS, JR.

was called to the stand on behalf of the defendant, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SEWELL:

Q. Would you state your name? A. James Wills, Jr.

Q. James Wills, Sr. who testified in this case, is that your father?

A. Yes, sir.

Q. Where do you live, Mr. Wills? A. 1003 Third Street, Northeast.

Q. Where do you work? A. 1741 Johnson Avenue, Glass Distributors.

273

Q. Directing your attention to August 15, 1961, was some baseball tickets given to you? A. Yes, there were.

* * * *

277

Q. Didn't you tell me you talked with Officer Bonaccorsy? A. No.

MR. SEWELL: I have no further questions.

MR. CAPUTY: No questions.

278

THE COURT: You may step down.

VALORIE CLEMONS

was called to the stand on behalf of the defendant, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SEWELL:

Q. Keep your voice up and state your name. A. Valorie Clemons.

Q. You are the wife of the defendant? A. Yes, I am.

Q. Directing your attention to August 15, 1961, were you married to him then? A. Yes, I was.

Q. Where are you living? A. 1810 H Place, Northeast, Apartment B.

Q. Now, on that day, did your husband go somewhere after he came home from work? A. He went to the ball game.

279

Q. What time did he leave home to go to the ball game? A. I

don't know exactly. It was around 7:30.

Q. All right. How was he dressed when he left home? A. He had on a -- you want me to tell what he had on?

Q. Yes. A. He had gray pants on, a red shirt, a red short shirt and his hat, a straw hat.

Q. Did he have anything else with him? A. His glasses, sun glasses. I don't recall anything else.

Q. He had no other article of clothing? A. I don't recall. I don't know.

Q. All right. Did you remain home? A. Yes, I did.

Q. Do you recall what time your husband came back home?

A. Not the exact time. I know I was looking at television. I was looking at the news on Channel seven and after the news went off, I turned the television off.

Q. Keep your voice up. A. After the news went off, I turned the television off and a few minutes after then, I heard him -- I heard his key in the door.

Q. Was this the 11:00 o'clock news on television? A. Yes.

280

THE COURT: Do you know the hour of the news?

THE WITNESS: 11:00 o'clock news on channel seven.

BY MR. SEWELL:

Q. Now, when he came in the house, Mrs. Clemons, could you tell us what he did? A. He came in the room and took off some of his clothes, his shirt and he went into the bathroom and right after he went in the bathroom, I came in there and he was brushing his teeth. That's all.

Q. Did he appear excited or distraught in any way? A. No, he seemed normal.

Q. All right. The next day, do you recall Officer Bonaccorsy coming to your home? A. Yes, he and another man.

Q. Did you have a conversation with Officer Bonaccorsy? A. No, he wouldn't say anything. I asked him what was it and he said something happened at the ball park.

Q. He told you that? A. Yes.

Q. Did you tell him what time your husband came home?
A. No, I don't recall. I didn't know the exact time.

MR. SEWELL: I have no further questions.

281

CROSS EXAMINATION

BY MR. CAPUTY:

Q. Did you tell Officer Bonaccorsy he came home about 12:30?

A. No, I didn't.

Q. You didn't sit up and watch the news until 12:30 on this day August -- what day are we talking about? A. August 15.

Q. Now, were you watching the news at 11:00 o'clock on August 15, is that what you were watching? A. Yes.

Q. What time did it go off? A. 11:30.

Q. How soon after the news went off did your husband come home?

A. About ten or fifteen minutes.

Q. So it was -- A. Not too long. It wasn't too long after the news went off.

Q. Did you watch the sports on television this night? A. After the news went off at 11:30, the late show comes on.

Q. No. My question is, did you listen to any sports on channel 282 seven and watch the sports on the news? A. Yes, that is in the news at 11.

Q. What time did that come on? A. The exact time I -- the sports come on?

Q. Yes. A. I don't know. It was between 11 and 11:30 when all the news was on.

Q. Do you remember who the newscaster was that was on on August 15? A. No, I didn't pay any attention.

Q. In addition to the news, can you tell us whether there was any weather reports that were given that night? A. Yes, it was given.

Q. Was it given too? A. Yes.

Q. Now, was the sports the last thing that you listened to on channel seven on this night? A. The sports the last thing?

Q. Yes. A. I wouldn't know.

Q. Well, now, at the time that your husband came home, you were still awake, weren't you? A. Yes.

283 Q. Were you still watching television? A. No, I wasn't.
 Q. You turned it off after the news? A. About a few minutes after the news.
 Q. You didn't watch any shows? A. No.
 Q. Was anyone else in the house at the time that you -- while you were home watching television up to the time your husband came home? A. My baby.
 Q. No grown-ups? A. No.
 Q. Now you stated that when your husband came home he went to the bathroom, is that correct? A. No, he came in the room first.
 Q. What? A. He came in the bedroom first.
 Q. What did he do in the bedroom? A. I said he took off his shirt and emptied his pockets on the dresser.

284 Q. He didn't put on any pajamas in the bedroom did he? A. No.
 Q. After he had been in the bedroom, did he go into the bathroom?
A. Yes. After he went in the bathroom, I followed him.
 Q. Did you go into the bathroom, also? A. Yes, I did.
 Q. In the bathroom, did your husband remove any clothes?
A. Yes, I think so.
 Q. Well, did he still have his trousers on? A. Yes, I think so.
 Q. Well, how about when he went to bed, did he still have his trousers on? A. No.
 Q. Did he put pajamas on? A. No, he doesn't sleep in pajamas.
 Q. Well, do you recall what he slept in? A. His shorts and shirt.
 Q. Undershirt? A. Yes.
 Q. Now, in the next morning, can you tell us whether your husband wore those shorts or whether he put on clean shorts? A. Whether he
285 wore the same --
 Q. Yes. The shorts he slept in or did he wear them the next day when he got up on the 16th or did he put on other shorts? A. To tell you the truth -- I guess I don't know.
 Q. You don't recall? A. Because I didn't know anything was going to happen.

Q. I did not ask you that. A. I didn't pay that much attention because I was fixing his lunch.

Q. Can you tell me how often your husband changes shorts, daily or what? A. Yes, he does.

Q. When he got up on the 16th, do you remember whether your husband put on clean shorts? A. He takes a bath in the evening when he comes home.

Q. No, I am talking about the 16th, after he had come home -- I mean, on the 16th, he came home after the ball game and he retired for the night and you say he retired for the night in the same shorts that he was wearing, correct?

Now, in the morning when he got up, did he put on clean shorts or did he go out in the shorts he slept in? A. That is the general idea.

286 Q. What? A. He didn't change.

Q. Did he wear the same shorts? A. To my knowledge he did.

Q. To your knowledge, is that what you are saying? A. Yes.

Q. He kept them on? A. As far as I know, yes.

Q. Now, did you have an opportunity when you were in the bathroom to observe the shorts of your husband? A. The night before?

Q. When he came home on the 15th. A. No. I might have had a chance but I didn't.

Q. Did you observe whether they were dirty or anything of the kind?

A. No.

Q. Now, showing you government exhibit No. 2 and 2-A, this is the shirt and these are the trousers that your husband was wearing on the 15th when he went to the ball game, aren't they? A. I imagine so.

Q. Not imagine, are they? A. They didn't look like this when he had them on.

Q. How did they look? A. These are all wrungled.

Q. Is that the color shirt your husband was wearing the night that he had gone to the ball game and returned you say around 11:30? A. Yes.

Q. That is the shirt? A. That's the color.

Q. Now, does your husband have more than one shirt of this color and this design? A. No.

Q. The same design? A. No.

Q. Well, now, will you look at the trousers and tell me whether they are the trousers your husband wore when he had gone to the ball game and when he returned that night? A. I wouldn't know.

Q. Same color? A. To tell you the truth, as I say --

Q. Are they the same color? A. The same color but as far as these, they have holes in them.

288 Q. We are not talking about the holes. A. It looks like them.

Q. Do they look like the trousers that your husband wore to the ball game that night? A. The color, that's all.

Q. The color? A. Yes.

Q. Would you say they are about the same size and length as your husband's trousers that he wore that night? A. I couldn't say.

Q. What? A. I couldn't say about the size.

Q. Have you ever seen the label on your husband's trousers that he had worn, this color? A. No, I have not noticed.

Q. Did you ever notice this label that is on the inside? Would that refresh your recollection, the label with the name Hershey on it?

A. No, I have never looked at it.

Q. Now, can you tell me as to the shorts that your husband was wearing, underwear, would they be jockey shorts that your husband was wearing? A. I don't know the name.

289 Q. Is this the type? A. Yes, he has shorts.

Q. Yes, he -- A. He wears that kind and the boxer shorts.

Q. But he wears this kind. When he came home on this occasion when you saw him, in the bathroom in the shorts, was this the type of shorts that your husband was wearing when he came home that night?

A. I didn't say I saw him in shorts in the bathroom.

Q. Did you see him in shorts when he was asleep? A. No.

Q. You saw him in shorts when he was asleep, did you not?

A. No, because I was asleep.

Q. When was it that you had gone to sleep? Had you gone to sleep before your husband came into the bedroom and removed his trousers and went to bed? When did you fall asleep? A. After he had gotten into bed.

Q. Well, after he had gotten into where? A. Bed.

Q. When your husband came to bed, did you state that your husband slept in shorts? A. Yes.

290 Q. Are these the kind of shorts that your husband slept in that night when he came to bed? A. They are the same make.

Q. The same kind, correct? A. The same make.

Q. Now, is this the kind of hat -- showing you government exhibit No. five in evidence, is this the kind of hat that your husband wore the night that he had gone to the ball game? A. Yes, it looks like it.

Q. Looks like it? A. Yes.

Q. Have you ever seen the inside of your husband's hat prior to this night, August 15, 1961? A. The inside of --

Q. Yes. A. Well --

Q. Did you ever look inside and see the name inside there?

A. I don't know about the name. I never noticed the label.

Q. Is that about the same size? A. Yes.

291 Q. About the same color? A. Yes.

Q. The same band around it? A. That's correct, yes.

Q. Now, did you -- didn't you tell Officer Bonaccorsy that your husband came home about 12:30? A. No, I don't recall.

Q. You don't recall? A. No.

MR. CAPUTY: That is all.

MR. SEWELL: No questions.

THE COURT: All right, you may step down.

SERENA JACKSON

was called to the stand on behalf of the defendant, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SEWELL:

Q. State your name. A. Serena Jackson.

Q. Where do you live? A. 418 T Street, Northwest.

292 Q. Directing your attention to August 15, 1961, where were you

living then? A. 1415 Holbrook Street, Northeast.

Q. Are you related to the defendant Charles Clemons? A. Mother.

Q. Do you have any other children? A. Yes, I have four more children.

Q. Do you have another son? A. Yes.

Q. What kind of work do you do, Mrs. Clemons -- Mrs. Jackson?

A. I am not working now. I have been under a doctor's care for over a year.

Q. Prior to that time, what were you doing? A. I was manager and dress maker for a valet shop.

Q. Where was that valet shop located? A. 825 New Hampshire Avenue, Northwest.

Q. What type of building was that in? A. It's an apartment building.

Q. When you say valet shop, is cleaning and pressing done on the premises? A. No, it is taken in and sent out.

293 Q. Now, I show you what has been marked government exhibit No. 2-A, a pair of trousers. I ask you to examine this and tell us if you have ever seen them before? A. Yes, I have seen them.

Q. And where did you first see them? A. Well, the pants were given to me by one of my customers with some other clothes.

Q. When? A. That was about two years ago while I was working at the valet shop.

Q. What did you do with them? A. Well, I brought the clothes home and I gave my other son, my younger son, some of the clothes be-

cause these pants were long and he is tall and they fit and so after he has worn them for a while, then I just cut them off, cuffed them and give them to Charles.

Q. Now, while your other son had those trousers, Mrs. Jackson, were they ever brought to the valet shop to be cleaned? A. Yes, I done all the cleaning for the family.

Q. Now, was anything unusual about those trousers, that you can recall? A. Well, the trousers had a couple of spots on them and they didn't come out from the cleaning and so when they come back from 294 the cleaning, before I brought them home, I would take a file or something and scrap this spot and that would blend in with the material.

Q. Where were these spots on the trousers, if you can recall? A. Well, they were near the fly area of the pants. I don't remember whether they were across or a little below.

Q. But they were in front? A. Yes.

Q. When did you cut the trousers off and give them to Charles? A. Oh, it was about June.

Q. Of what year? A. I mean of '61.

Q. June of 1961? A. Yes.

Q. And directing your attention to the 16th of August, 1961, did there come a time when Officer Bonaccorsy came to your house? A. Yes.

Q. And at the time he came there, did you have a conversation with him? A. Yes, I did.

295 Q. What was that conversation about? A. Well, he told me -- he asked me for my husband and my husband wasn't home and so he said, he would like to speak with men and it is about my son. So I invited him in and I had guests in the living room and so I invited him in the dining room and we talked there.

Q. And did you turn over anything to him at that time? A. Yes. He asked me about -- if my husband went to the ball game with my son. So I said, he didn't go with my son but he met him at the ball game and he gave him a ticket and so he asked me if I had the ticket, if my husband still had the ticket and I said I didn't know.

And so in talking, he said to me, if I could find the ticket and so I looked in the clothes hamper and found the shirt my husband wore to the ball game and I found the ticket.

Q. Did you take the number off that ticket? A. I looked at the number on the ticket before I gave it to him and he put it in a small black pocket book or address book.

THE COURT: Did you see the number on the ticket?

THE WITNESS: Yes, I looked at the number.

BY MR. SEWELL:

296 Q. Before you gave it to him? A. Yes.

Q. And did there come a time when you wrote it down somewhere? A. Yes, after he had put the ticket away I said, I better write it down, the number. I may forget it.

Q. Did you ask him for it? A. He gave it to me.

Q. Now, do you know James Wills, Jr.? A. Yes.

Q. All right. James Wills, Jr. came to your house some time after Charles was arrested? A. Yes, he did.

Q. Did he have a conversation with you? A. Yes.

Q. And when he left your house, did he tell you where he was going? A. Yes.

Q. Where did he tell you he was going? A. He said that he was going down to No. 19 Precinct and if he couldn't get any satisfaction there, he would go to headquarters and we told him not to go because we would rather for him to talk to the lawyer but he went any way.

297 MR. SEWELL: I have no further questions.

CROSS EXAMINATION

BY MR. CAPUTY:

Q. Now, were there any spots on those trousers when they were given to you two years ago? A. Yes.

Q. Spots on them then? A. Yes.

Q. The same place? A. Always been there.

Q. At the same place, the fly area. A. Yes.

Q. And that was two years ago? A. Yes.

Q. That was two years ago when? A. In '59.

Q. You got these in '59? A. Yes.

Q. When in '59? A. Well, I couldn't say right off but I know I was working in '59, that is when I got the clothes.

Q. Now, a period of time that you got them in '59, your son wore them, is that correct? A. Yes.

298 Q. Now, did you have them cleaned many times from 1959, from the time you got them? A. Yes.

Q. About how many times did you have those trousers cleaned? A. I didn't say how many.

Q. Give me an approximation. Would you say it was a couple dozen times that you had them cleaned? A. Well, I don't know. I just take a batch of clothes to the cleaners and have them cleaned.

Q. Do you recall taking these to the cleaners? A. Yes.

Q. And that the clothes were cleaned? A. Yes.

Q. I am asking you in this period of time, if you can give me an approximation of about how many times you had those trousers cleaned in an effort to get the spots out?

MR. SEWELL: I object to that.

THE COURT: I will sustain the objection to the form of the question.

BY MR. CAPUTY:

299 Q. About how many times did you have them cleaned? A. Several times.

Q. Would you say by several, would you say about a dozen times or more? A. It could be less and it could have been a dozen times.

Q. And all of this time, did you tell them at the cleaners to try to remove those spots? A. The spot was in, and it wouldn't come out.

Q. Did you ask them to remove it? A. Yes. It had been sent back but the spot wouldn't come out. If they had been washed before they were sent to the cleaners, before they got to the cleaning fluid, the spot would not have stayed in there.

Q. Did you ever wash these? A. No.

Q. Now, you don't know whether anyone attempted to wash these?

A. No, I just put a note on there for them to reclean them, and they would come back with the spot in them.

Q. Still on them? A. Yes.

Q. Was it a very large spot, visible to the eye as you were standing
300 for a distance of a few feet? A. No, it wasn't that visible but if you were close to him, you could see the spot was there. That is why I scraped the spot and it would blend with the material.

Q. Did you scrape it many times? A. Not only those pants but many clothes that come in.

Q. I am talking about these pants. A. Those, yes.

Q. Many times? A. Yes.

Q. You don't know if they had gone to the cleaners since your son, the defendant in this case, wore them, do you? A. Well, I imagine they have.

Q. You don't know that of your own personal knowledge?

A. No, I don't know that.

MR. CAPUTY: I have no further questions.

MR. SEWELL: Nothing else.

THE COURT: You may step down.

MR. SEWELL: I would like to recall Mr. Wills to ask him one or two questions.

THE COURT: Which one?

MR. SEWELL: Junior.

301 JAMES WILLS, JR.

was recalled to the stand on behalf of the defendant, previously sworn, was examined further as follows:

REDIRECT EXAMINATION

BY MR. SEWELL:

Q. Do you know a fellow who works for Glass Distributors by the name of Miller or Murphy? A. Yes.

Q. Did this Miller or Murphy ever come to you with -- concerning Mrs. Waters on the 16th? A. No.

Q. He didn't? A. No.

Q. Did you ever tell anybody that he had? A. No.

Q. Is he the person that you suggested to the police that might have done this? A. I didn't make any suggestion to the police who may have done it.

MR. SEWELL: I have no further questions.

MR. CAPUTY: No questions.

THE COURT: You may step down.

302 MR. SEWELL: If Your Honor please, I would like to offer into evidence defendant's exhibit No. 1.

THE COURT: Very well. It will be received.

(Defendant's exhibit No. 1 was received into evidence.)

(Mr. Sewell conferring with the defendant in this case.)

THE COURT: We will take a ten minutes recess at this time, Ladies and Gentlemen, with the same admonition.

(Whereupon, a short recess was taken.)

MR. SEWELL: The defense rests, Your Honor.

THE COURT: Come to the bench.

(Bench Conference had but not reported)

(Bench Conference.)

MR. SEWELL: Your Honor, I have discussed this defendant's rights with him, that he is under no obligation to present any evidence in his behalf and that he may or may not take the stand and that if he doesn't take the stand, the Judge will advise the jury that they should draw no inference of his guilt because of his failure to take the stand and during the recess he has determined that he did not want to take the stand.

THE COURT: He is the one to determine that, Mr. Sewell. You feel he has been fully advised as to this matter?

303 MR. SEWELL: Yes, Your Honor.

THE COURT: I have seen you conferring with the defendant and he has elected not to take the stand and you are satisfied that he understands what you advised him?

MR. SEWELL: Yes.

THE COURT: You are satisfied he has been fully advised of all of his rights?

MR. SEWELL: Yes, Your Honor.

Your Honor, about this transcript of the preliminary proceedings, I have used it in several questions and I wonder if I should not have this marked and offer it?

THE COURT: Yes, the jury is entitled to those portions which you asked for. Both you and Mr. Caputy check it and we will mark those portions you want in.

MR. CAPUTY: It might take some time. I am not familiar with it. I may have to read it.

THE COURT: I don't think this is the time to read it.

MR. CAPUTY: I don't know how to pass upon it. Your Honor, unless I read it.

THE COURT: Why didn't you have it? Can you tell me?

MR. CAPUTY: I didn't have it.

THE COURT: Why didn't you have it?

304 MR. CAPUTY: They never give us a copy of it.

THE COURT: Did you ask for it?

Well, show the portions you want to Mr. Caputy and we will take a short recess for that.

(End of Bench Conference.)

THE COURT: Ladies and Gentlemen, we will take a short recess with the same admonition, please.

(Whereupon, a short recess was taken.)

THE COURT: Ladies and Gentlemen, during the recess I talked to counsel and because of the lateness of the hour, we are going to

excuse you so you won't be just standing around while I take up matters with counsel that don't concern you.

You are excused to return tomorrow morning at 9:45 in back of this court room, and please be admonished: Permit no one to speak to you about this case and don't you speak to anyone about this case and don't even discuss it among yourselves. It will be your duty to do that when you retire to the jury room.

Is there anything further from either counsel?

MR. SEWELL: No.

MR. CAPUTY: No.

THE COURT: You are excused, Ladies and Gentlemen.

305 (Jury excused from the court room.)

THE COURT: When you have finished with those matters, come to chambers. I would like to talk to you about some matters.

(A short recess was taken.)

In Chambers:

THE COURT: I have asked counsel to come into chambers after they have gone over the transcript which I understand was before the Coroner.

MR. SEWELL: A hearing on September 1 in the Municipal Court.

THE COURT: I have asked that they indicate the specific parts of that transcript which were used in the course of the examination of the witnesses in this case.

I now understand, Mr. Sewell, you want what you read from page four, line two?

MR. SEWELL: That is correct.

THE COURT: Have you anything to add to that?

MR. CAPUTY: No, sir.

THE COURT: Then page five, Mr. Sewell, line 13 through 17?

MR. SEWELL: Yes, sir.

THE COURT: Mr. Caputy do you have anything?

MR. CAPUTY: No.

306 THE COURT: Then, Mr. Sewell, you referred to page seven, lines 2, 3 and four.

MR. SEWELL: That is right.

THE COURT: Do you have anything, Mr. Caputy, in the transcript that relates specifically to that?

MR. CAPUTY: No.

THE COURT: Then page eight, lines 2 through 9.

MR. SEWELL: That's right.

THE COURT: Mr. Caputy, do you have anything that relates to that in the transcript?

MR. CAPUTY: Page eight, lines two through --

THE COURT: Nine.

MR. CAPUTY: The only request I had, page ten and --

THE COURT: We are coming to that.

Now, page ten, lines 8 through 25.

MR. SEWELL: That is right, sir.

THE COURT: You want that and I understand the District Attorney wants that also?

MR. CAPUTY: Yes.

MR. SEWELL: Your Honor, while on page ten -- well, yes, that is right.

MR. CAPUTY: I want lines 19 through -- no. We got that.

307 THE COURT: Yes, we have that.

MR. CAPUTY: But that is not impeachment.

THE COURT: I thought you wanted it.

MR. CAPUTY: I want that last question. I want the matter about the lieutenant, Your Honor.

THE COURT: You have that.

MR. CAPUTY: I don't want that.

MR. SEWELL: I don't want that.

THE COURT: Let's get the record straight.

Mr. Sewell, you want lines 18 through 25 and the District Attorney wants that, also?

MR. SEWELL: That is all on page ten.

THE COURT: All right. Now, page 28, line 14 through page 29, line four.

MR. SEWELL: That's right.

THE COURT: Mr. Caputy, have you anything by way of explanation for that?

MR. CAPUTY: No, Your Honor.

THE COURT: That brings me to page 33 and, Mr. Sewell, you want lines six and seven?

MR. SEWELL: That's right.

THE COURT: Anything by way of explanation, Mr. Caputy?

308 MR. CAPUTY: No.

THE COURT: Now, Gentlemen, as I understand it we have the parts of the transcript which you have used and what you characterize as impeachment matters, Mr. Sewell?

MR. SEWELL: Yes, Your Honor.

THE COURT: Now, Mr. Caputy, you have such matters as you desire?

MR. CAPUTY: Yes.

THE COURT: Now, both counsel have what they want from the transcript?

MR. SEWELL: There is one other part that I used.

THE COURT: Do you want it?

MR. SEWELL: Page 30, line four and five. He says he arrived there at 12:20 in this case and there he says around 12:30.

THE COURT: Yes, I think you did use this.

Mr. Caputy, do you have anything by way of explanation thereof?

MR. CAPUTY: No.

THE COURT: All right, sir. Now, Mr. Sewell, you have the pertinent parts that you want from the transcript?

MR. SEWELL: Yes, Your Honor.

* * * *

[Filed August 22, 1962]

311

Washington, D. C.,
February 21, 1962

* * * * *

330

REBUTTAL ARGUMENT

MR. CAPUTY: If Your Honor please, Members of the Jury, we shall not, Members of the Jury, take too much of your time but it is necessary to answer some of the things that counsel has suggested to you.

Now, in his opening remarks, Members of the Jury, he wanted to know why government counsel made no comment of the testimony of Officer Jones.

Well, it could be, Members of the Jury, that government counsel forgot about it but since he has mentioned Jones, Members of the Jury, it is necessary now to talk a little about him and maybe about some other police officers.

Can you not readily, Members of the Jury, come to the conclusion that other police officers didn't come here to testify because they had nothing to add?

Now, when Det. Bonaccorsy was on the stand, counsel wanted to know if an identification man was there and if he had dusted the place for prints and I believe his testimony shows that he said there was an identification man and that the man was Jones and I believe, also, that Mr. Bonaccorsy said that he didn't think there were any latent prints taken or found in the premises.

331 Well, because of the questions then, Members of the Jury, that were asked by counsel, government counsel then deemed it necessary to have that officer come here and tell you if he had gone there and if he had dusted the place for prints. So he took the stand, Members of the Jury, and he said that he did look around for fingerprints but could not find any identifiable latent prints there in the premises.

Well, Members of the Jury, what evidence did he present here today in this case? Now, if we had known about it, we would not have offered him because he offered nothing, he found no prints.

There were photographs taken, Members of the Jury, and counsel asked the officer if he had taken the photographs and he stated he had not and it was then necessary, Members of the Jury, to find the individual who had taken the photographs.

Now, Members of the Jury, counsel in his argument seems to make much of one thing only in his argument, the ticket which Jones claims that he found there on the steps. He said that he recovered it on the steps. Well, now, when he said that, Members of the Jury, if you will recall there was a recess taken, asked by government counsel, and he was asked by government counsel if there was anyone else there at the time that he recovered that ticket, as he stated, and he told you then, Members

332 of the Jury, that there were members of the Sex Squad there and there were other officers there and he also told you, Members of the Jury, that there was a dog of the Canine Corps, I believe his testimony was and it is your recollection, not mine.

Now, since Jones tells you, Members of the Jury, as he testified there on the stand, that he recovered that ticket, these other police officers are lying. That is what he is saying, that Bias is lying, that Det. Holden is lying and counsel has made much of the fact, Members of the Jury, that that police officer, Det. Holden, did not testify about the dog and also that Det. Bias did not testify about the dog.

Well, Members of the Jury, from experience, as you know, a witness on the witness stand answers questions that are asked here in open court and when Holden was recalled, he was asked by counsel for the defendant, well, why didn't you testify about the dog and if you recall his testimony, he said, I wasn't asked and then when counsel attempted to impeach him, Det. Holden, about the ticket, didn't you say you had it in your possession all the time and didn't you testify at a preliminary hearing that you, Holden, had that ticket in your possession all the time and you will recall his answer, I wasn't asked. I didn't testify from the

333 stand that I had that ticket in my possession all the time.

If you can search your memories, Members of the Jury, of the

brief questioning by government counsel of that detective when he was on the stand, you will find that the questions were brief and that he then was asked if he found anything and he said, shortly after he got in the premises, he recovered that ticket and if you will recall, that there was no questioning by government counsel, did you keep that in your possession all the time and the question was, did you turn that ticket over to anyone and the answer, Members of the Jury, was that he turned it over to Bonaccorsy and he didn't testify from that stand that he had it in his possession all the time.

Let's come to the argument that he has advanced here. Members of the Jury, he tells you, Members of the Jury, that Holden is a liar, that he didn't have it in his possession all the time. Well, Members of the Jury, when all this came out through Officer Jones, that he claimed that he recovered it, when Jones admits, Members of the Jury, when asked the question about the canine corps, he said, yes, they were there and then we recalled Holden to that stand and he was asked specifically. Members of the Jury, concerning the outside and he said, yes, there were members

334 of the Canine Corps there and there was a dog there and another police officer and he said, then, that he had taken that ticket and he had placed it outside and he said, then that he went upstairs in the window and looked out the window and saw that the dog went to sniff the ticket and that the dog had taken it and placed it in his mouth. He said also that he went inside and looked out the window because he didn't want the dog to get his scent which is logical, didn't want the dog to get his scent and so we say, Members of the Jury, and when he said he turned that ticket over to Jones for fingerprints, does that make any difference? That is part of his job, Members of the Jury, to see if anything can be recovered from that ticket.

If he had been asked the questions specifically. Members of the Jury, you can rest assured he could have given the answers, that he turned it over but he was not asked the question.

When we recalled him, Members of the Jury, he said that he recovered the ticket and after he took it from the dog he wiped off the saliva and he

straightened the ticket out and do you recall the testimony of Jones ?
Jones corroborated that, Members of the Jury, that the dog had the ticket
in his mouth and Jones said that ticket had teeth marks in it and when all
of this happened, we presented Holden who was asked the question, have
335 you talked to government counsel since you have been on the stand
and he said, he had not and then we presented, Members of the Jury, Det.
Bias who told you specifically, asked about that, he told you that ticket
was placed by Holden on the steps and the dog had taken it and the police
grabbed for it and the trainer of the dog slapped him or something and
took the ticket away from the dog.

Members of the Jury, that is the explanation of what Jones has
testified here and what light, if that testimony had been presented in the
case in chief, would that have thrown on it ?

Counsel wants you to believe that there was some fraud perpetrated
here by the police that Bias didn't see that ticket inside there in the middle
room, that he didn't make the recordation there and that Det. Holden did
not recover that ticket in that middle room.

Now, Members of the Jury, in good conscious, can you say these
police officers here are lying when they tell you that they saw that ticket
there in that room and that it was recovered in that room ?

Bias said it was near a hassock and Holden said it was near an ottoman,
336 the same thing, Members of the Jury. That explains it, Members
of the Jury.

Now, counsel said there was blood on that blouse, government
exhibit No. 1-A, the blouse. Now, if you will search your memories, you
will find that at no time did the agent say there was blood on that blouse.
His testimony, Members of the Jury, was that there was a fiber but
McWright said there was a seminal stain on the nightgown and blood on the
nightgown.

Now, McWright did not testify, if you search your memories, that
there was blood on that blouse.

Now, there is another thing, Members of the Jury, that counsel

wants to know why that blouse was here in evidence. Well, now, you have the testimony, the testimony of the 80 year old woman that she thought that blouse was in the soiled clothes container but you have the testimony of Bias and Bias says that blouse was on the floor and that is why he recovered it.

Now, Mrs. Waters, because of what she had experienced, might not have seen that blouse on the floor but you have Bias who said he recovered it from the floor and as a good policeman he submitted that to see if anything could be found on that blouse and he submitted it, Members of the

337 Jury, to see if at any time that blouse might have been handled by the defendant and if you can recall, Bias' testimony was that the blouse was given to the dog to sniff or smell and later on the ticket was given to the dog to sniff and smell.

Now, there is another thing, Members of the Jury, that government counsel must and takes exception to, the uncalled for and unkind statements when he said, that he doesn't know why the blouse and even the blouse, when he said that the police must have rubbed the blouse and the nightgown on the floor and that is how the fibers got on the blouse and on the nightgown. That is what he is telling you. He is telling you that the police have committed fraud.

Where is there anything in this case, Members of the Jury, that would warrant such a statement by counsel, saying that the police are fabricators and that they are frauds? Where?

Now, Members of the Jury, there are certain things that cannot escape your minds as reasonable men and women to show you the light and the way, that this individual is the individual that raped that woman, things definitely tie this defendant with this crime, bearing in mind when you go to that jury room, Members of the Jury, that his wife, the def-

338 endant's wife said that he had gone to the ball game. Bear in mind that Maxwell Washington and Cox and Dowe and Wills, Sr., said that this defendant was at the ball game. Bear in mind that the testimony, Members of the Jury, shows that this defendant occupied seat 21. Bear in mind, too,

Members of the Jury, Bonaccorsy and Clouse testified that this defendant said he was in seat 21. Bear in mind, too, Members of the Jury, and see as we go along, that we definitely can show by the evidence that this individual is the one.

You have the testimony of the respective people at the ball game, three out of four whom we presented said he was wearing a blouse, a blouse similar to the one that is here in evidence and the blouse has been testified to by the complainant, the kind the attacker had. Now, is that a coincidence, Members of the Jury?

Bear in mind, too, Members of the Jury, that he, of all the individuals, didn't have a baseball ticket and bear in mind, Members of the Jury, that that baseball ticket was recovered in the premises.

Now, the victim said she got home about 11:30 after having gone to see the Music Man and the police said they recovered that ticket there but counsel in his argument says to you, well, they don't have the other

339 policemen here and they don't have the dog here. Maybe the policeman and the dog were at the ball park. He is trying to convey, Members of the Jury, that the policeman and the dog were at the ball park and they picked up this stub. How ridiculous can you get.

Now, Members of the Jury, there is no evidence here -- this stub, this defendant said he lost it and we agree that he lost it and it is the government's position that he lost it there in that room, at the time, Members of the Jury, that he was attacking the person of this 80 year old woman and that is when he lost it.

Now, we have those factors but that isn't all, Members of the Jury. As you go into that jury room, bear in mind the inescapable conclusion of the work of the police officers showing that this individual committed the offense.

You have the testimony, Members of the Jury, of the doctor who said that woman had bruises in the vagina and that she was bleeding there in the vagina and then, Members of the Jury, you have the testimony of O'Tousa of the Federal Bureau of Investigation who told you, if you recall his testimony, that the known exhibit, the fibers in exhibit 7, the

fibers which came, as the officer said, from the house, that Bonaccorsy had taken from the house, of the rug on that floor at the premises 1213 340 I Street, Northwest and bear in mind the testimony of O'Tousa who said that the fibers, the debris taken from the pants of this defendant were similar in color and similar in composition to the fibers that we know that came from that rug in government exhibit No. 7. Now, is that a coincidence?

There is nothing else here in this case, Members of the Jury, to indicate that that fiber came from some other rug. The only evidence you have is the fibers, known to be similar in composition and color to the fibers in government exhibit 7 and the evidence is that it came from that rug.

Bear in mind, Ladies and Gentlemen, as you go into that jury room and deliberate on this case, bear in mind the testimony of agent McWright who is an expert on fluids and stains, bear in mind his testimony. Government exhibit No. 1, the nightgown had seminal stains on it and counsel tried to show they were her stains but the agent said no, they are male stains. They couldn't be hers. The nightgown had seminal stains and he also said that the nightgown contained some blood but not enough, he said, to do anything more with the blood and what else does he tell you? He tells you, Members of the Jury, that the pants contained the stain on the front and he also tells you that the shorts contained seminal stains 341 and in addition, Members of the Jury, that the shorts, the inside of the shorts contained blood.

Now, there is only one way without going into detail and explaining to you people, particularly the men, how that blood could have gotten inside of those shorts and we say, Members of the Jury, that too is a fact which proves that this individual is the individual who had intercourse with that female.

What more, Members of a Jury, must a jury have to show beyond a reasonable doubt circumstantially that this individual is the individual that committed the offense?

Whom did they present? You will recall they presented Wills, Jr., and first before Wills, Jr., counsel asked Bonaccorsy, didn't Wills, Jr. come to you and say, are you sure you got the right man and Bonaccorsy said, no, he didn't and they put Wills, Jr. on and he said, no, I didn't tell Bonaccorsy that.

You also heard the denial made to counsel by Washington when he asked the question. Who did they present, Members of the Jury? The wife and the wife said that he came home from the ball game and he went to the bathroom and he went to bed and that he went to bed in his shorts and

342 she said after much reluctance that government's exhibit No. 2-B are like the shorts that her husband wore and wears and after much reluctance she said the trousers are the trousers of the defendant.

Now, Members of the Jury, they are trying to explain the stains on the trousers and the agent said the stains on the trousers are seminal stains and they bring the mother in and the mother says about two years ago, 1959, a customer gave her those trousers and counsel in his argument says that has not been rebutted. How can it be rebutted? Now, they could have presented, Members of the Jury -

MR. SEWELL: I think this is improper. He said we could have presented --

THE COURT: Ladies and Gentlemen, the defendant doesn't have to bring anybody in. You will determine whether the government has proven beyond a reasonable doubt the offense which the defendant is here charged with.

MR. CAPUTY: May I make the statement, where is the witness, Members of the Jury, who --

THE COURT: The question is, Ladies and Gentlemen, the defendant is not required to bring anybody in. You are going to determine this case on the evidence which the government has shown you and whether or not that proves beyond a reasonable doubt that the defendant is guilty as charged.

343 MR. CAPUTY: Very well, Your Honor.

So she tells you that when she got the trousers in 1959, about two years ago, they contained some stains on them and that she sent them to the cleaners, she sent the trousers to the cleaners and we tried to get out of her how many times she sent them to the cleaners and she said -- she admits, I believe, about a dozen times and the stain didn't come off but bear in mind the testimony of McWright when asked if the stains would come off in washing, normal washing and would cleaning take it off and if you recall his answer, I believe it was, that a good cleaning would take it off and certainly if a good cleaning would take it off, Members of the Jury, a dozen cleanings would have taken that stain off.

We say, Members of the Jury, that the government has shown beyond a reasonable doubt, beyond any doubt, that this defendant has committed the crime and we ask you for a verdict of guilty as charged.

344

CHARGE BY THE COURT

Ladies and Gentlemen, we have just about reached the point in this case when it will be your duty to retire to the jury room, select your foreman and determine the guilt or innocence of the defendant who stands charged before you in a one count indictment with the offense known to the law as rape.

You will be permitted to take with you to the jury room the indictment.

By now you know it is the duty of the court to instruct you as to the law of the case, namely, the rules and principles which shall guide you in determining the issues in the case and further, that you are bound and obligated to follow those rules and principles.

On the other hand, you are the sole judges of the facts and it will be for you to determine all issues of fact from the testimony adduced from the witness stand and reasonable inferences to be deduced from proven facts and in conformity with your recollection thereof.

Counsel for the government and counsel for the defense each have the right to make what we call opening statements, indicating to you what they hope they may be able to show for their respective sides and at

345

the conclusion of the case, to sum-up, as we say, indicating to you

what they believe in fact they have been able to show for their respective sides. This is a right and privilege of both counsel.

The court merely says to you that statements of counsel, whether government counsel or defense counsel, do not constitute evidence in the case and furthermore, it is not government counsel's or defense counsel's or the court's recollection of the facts which control. You are the sole judges of the facts and you will determine the facts from your recollection thereof.

The mere fact that a defendant has been indicted, as indicated by the sheet of paper which I have displayed to you, is not to be construed by you as evidence. It is not. The sole purpose of an indictment is to advise a defendant of the charge or charges which he must face in the case. It is not evidence.

Every defendant in a criminal case is presumed to be innocent and this presumption of innocence attaches to a defendant throughout the trial. The burden is on the government to prove a defendant guilty beyond a reasonable doubt and if the government fails to sustain this burden, then you must find the defendant not guilty.

346 You may well ask what is meant by the phrase a reasonable doubt. It does not mean any doubt whatsoever. Proof beyond a reasonable doubt is proof to a moral certainty and not necessarily proof to an absolute or mathematical certainty.

By a reasonable doubt, as the name implies, is meant a doubt based on reason and not any whimsical or capricious conjecture. It is a doubt which is reasonable in view of all the evidence.

Therefore, if after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied with the guilt of a defendant, then you have a reasonable doubt; but, if after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of a defendant's guilt, such as you would be willing to act upon in the weighty and important matters relating to your personal affairs, then you have no reasonable doubt.

I have already said to you that you are the sole judges of the facts and so too are you necessarily the sole judges of the credibility of the various witnesses who have testified in this case.

347 By that I mean their worthiness of belief. How do you determine credibility? In doing so you should take into consideration the demeanor of the witness on the stand, his manner of testifying, whether he impresses you as a truthtelling individual, his opportunity of knowing the facts and circumstances about which he has testified, whether he entertains any bias or prejudice for or against the defendant and then, from all of these facts and circumstances, it is for you to determine the weight which you will give to the testimony of each and every witness who has appeared before you.

You are further instructed that if you find any witness, whether for the government or for the defense, has testified falsely and knowingly as to a material fact about which he could not be mistaken, then you may, if you deem it wise to do so, disregard the entire testimony or any part of the testimony of such witness or witnesses except where you find it corroborated by other credible testimony.

There has been testimony in this case which is known as the testimony of experts. In other words, the FBI witnesses and the doctors who have testified in this case.

You are instructed as follows in that regard: An expert in a particular field is permitted to give his opinion in evidence and you are in-

348 structed that you are not bound by the testimony of such expert but that you should consider it in connection with the other evidence in the case and give it such weight as you believe it fairly entitled to.

As you have previously been told, no inference of guilt arises against a defendant because of his failure to take the stand in his own behalf.

Now, in courts of law as well as in the ordinary affairs of life, when issues are presented for determination, there are two types of evidence which can be utilized in resolving the issue or issues presented.

One is known as direct evidence and the other is known as indirect or circumstantial evidence. Both types of evidence have been presented in this case.

Direct evidence is the testimony of a person as to what he saw or what he heard. Indirect evidence is supplied by testimony as to facts and circumstances which tend to show that the offense under inquiry has been committed and by whom it was committed.

In other words, indirect or circumstantial evidence is composed of proved facts which raise a logical inference as to the existence of the fact that is in issue in a particular case and which by experience have been found to be so associated with that fact in the relation of cause and effect that they lead to a satisfactory conclusion.

A homely but convincing example of circumstantial evidence is a track of an animal in the snow. If you see a rabbit track in the snow, you know that a rabbit has been there just as well as if in fact you saw the rabbit.

To repeat to you, both types of evidence have been introduced in this case and both types of evidence are entitled to consideration by a jury.

Indeed, in certain instances, a jury may well find that circumstantial evidence is more convincing than direct evidence but the rule of law is, that whether the evidence be direct or circumstantial or a combination of the two, that before a person may be convicted of a criminal offense, that the evidence must add up to proof beyond a reasonable doubt.

This brings me, Ladies and Gentlemen, to the specific charge which the defendant here faces.

To repeat, he is charged with the offense known to the law as rape, in that he had carnal knowledge of a female named Meta Waters forcibly and against her will.

Counsel for the defendant has not challenged the fact that Meta Waters was in fact raped on the occasion in question. He says to you

350 that this defendant was not the person who did commit the offense.

In other words, he has said to you and there is testimony to the effect that he was not present at the scene and, of course, could not have committed the offense for which he is charged.

Now, that is known as alibi and alibi certainly is a valid defense. If a person in fact not be there and the government failed to show beyond a reasonable doubt that the defendant was there at the time of the occurrence, of course, you need go no further because it is essential that he be there and participate in the offense.

Now, the evidence adduced in support of the defense of alibi, like all the evidence in the case, should be given such weight and such consideration as you may think it entitled to under all the facts and circumstances of the case.

If after a full and fair consideration of all the facts and circumstances in evidence, you find that the government has failed to prove beyond a reasonable doubt that the defendant was present at the time and place of the commission of the offense charged in the indictment, then one of the essential elements of the offense is lacking and it would be your duty to find the defendant not guilty.

351 If you find the government has proved beyond a reasonable doubt that the defendant was in fact present at the time and place of the occurrence here charged, then you will have for your consideration whether the essential elements of the offense of rape have been proven and rape is defined in the District of Columbia Code as having carnal knowledge of a female forcibly and against her will.

The words carnal knowledge are synonymous with sexual intercourse. In plain language, rape may be defined as having sexual intercourse with a female forcibly and against her will.

To establish the crime of rape, the government must prove two essential elements.

1. That the defendant had carnal knowledge of the complaining witness, Meta Waters.

2. That the act was committed forcibly and against the will of the complaining witness.

As to the first element, carnal knowledge, there must have been a penetration of the male organ into the female organ. The slightest penetration is sufficient.

As to the second element, namely, lack of consent, in order to 352 justify a conviction on the charge of rape, the female must have resisted the act to the utmost of her physical powers unless her resistance was overcome by threats which put her in fear of death or grave bodily harm, or by these combined with some degree of physical force.

The law does not permit a conviction of a charge of rape on the basis of the testimony of a complaining witness standing alone. Corroboration of her testimony is required according to the rule of law prevailing in the District of Columbia. Such corroboration, however, need not be by eye witnesses because eye witnesses are hardly ever obtained in regard to such an offense as charged in this case. Corroborating circumstances may be sufficient corroboration.

If you should find that the government has proven beyond a reasonable doubt both of the essential elements which I have enumerated for you, then you may find the defendant guilty.

If, however, you should find that the government failed to prove beyond a reasonable doubt either or both of the essential elements, then you must find the defendant not guilty as charged in the indictment.

You are further instructed as follows: The law in the District of Columbia provides that in any case of rape, the jury may add to their 353 verdict, if it be a guilty verdict, the words, "With the Death Penalty." If the jury, without adding those words, should return a verdict of guilty of rape, then the statute provides punishment by imprisonment to be imposed upon the defendant by the court.

You Ladies and Gentlemen when you were selected to sit in this case, swore that you would determine the guilt or innocence of this defendant solely from the evidence adduced from the witness stand and

and reasonable inferences to be deduced from proven facts and in conformity with your recollection.

You are further instructed that you are not to be moved by any bias or prejudice for or against the defendant, or sympathy.

Your verdict in this case may be one of three:

Guilty as charged which would be guilty of the offense of rape.

Guilty of rape with the death penalty.

Not guilty. Your verdict must be unanimous.

Has government counsel anything to add?

MR. CAPUTY: Nothing.

MR. SEWELL: No, sir.

THE COURT: If there be nothing further from either counsel, the
354 court will first excuse the alternates with the thanks of government counsel and defense counsel and the court, the contingency for which you were selected not having occurred.

As to you twelve remaining Ladies and Gentlemen, it now becomes your duty to retire to the jury room, select your foreman and determine the guilt or innocence of this defendant who is charged in a one count indictment with the offense known to the law as rape.

There are three possible verdicts in this case.

1. Guilty of rape.
2. Guilty of rape with the death penalty.
3. Not guilty.

Your verdict must be unanimous.

Do either counsel at this time have anything to add?

MR. SEWELL: No, sir.

MR. CAPUTY: Nothing, Your Honor.

THE COURT: You may now retire to sit and decide the case.

Because of the hour, Ladies and Gentlemen, I am going to ask you to retire to the jury room and then have the Marshal take you to lunch and you will start your deliberations after lunch.

355 Please keep before you this admonition: Permit no one to speak to you about this case and don't speak to anyone about the case. Do not

even talk among yourselves about the case. It will be your duty to do that when you retire to the jury room.

Is there any further admonition from either counsel?

MR. SEWELL: No.

MR. CAPUTY: None.

THE COURT: You may now retire and the Marshal will take you to lunch.

I should say one further thing to you. Both counsel have suggested that you may take any of the exhibits which were introduced into this case, if you wish and if you desire any of the exhibits, make that fact known to the Marshal and they will be given to you.

(Whereupon, at 12:35 the jury was taken to lunch to start deliberations of the case at 1:45 p.m. the same day.)

* * * * *

[Filed March 30, 1962]

JUDGMENT AND COMMITMENT

On this 30th day of March, 1962 came the attorney for the government and the defendant appeared in person and by counsel, Wilbur W. Sewell, Esquire.

It appearing to the Court that on the 22nd day of March, 1962, there was filed an information setting forth a prior conviction of the defendant on November 2, 1956, and the defendant having affirmed in open Court that he is identical with the person previously convicted of the crimes of Housebreaking and Larceny,

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of RAPE as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Ten (10) years to Thirty (30) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ RICHMOND B. KEECH
United States District Judge,

Clerk.

A True Copy. Certified this 30th day of March, 1962

/s/ HARRY M. HULL
Clerk

(By) /s/ H. Kline
Deputy Clerk
